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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 717

IN THE MATTER OF WILLIAM W. RADFORD, SR.,
BANKRUPT.

LOUISVILLE JOINT STOCK LAND BANK,
Petitioner,

v.

WILLIAM W. RADFORD, SR.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT.

Preliminary Statement.

This case is brought to this Court on a writ of certiorari issued on March 4, 1935, by this Court to review the affirmance by the Circuit Court of Appeals for the Sixth Circuit of the decree of the United States District Court for the Western District of Kentucky staying the foreclosure of two certain mortgages by the petitioner upon

respondent's farm, enjoining petitioner from enforcing any lien it may have upon said lands for a period of 5 years and ordering that the respondent shall retain possession of said lands under the control of the court during a period of 5 years from the date of the order, December 1, 1934, provided that he pays to the trustee in bankruptcy $325 as a reasonable rental for the first year and the amounts to be fixed by the court as rental for each subsequent year. The proceedings below were in bankruptcy pursuant to and in accordance with the provisions of the so-called Frazier-Lemke Amendment to the Bankruptcy Law, Section 75 of the Bankruptcy Act, as amended by the Act of June 28, 1934.

Opinions Below.

The opinion of the District Court is reported at 8 Fed. Supp. 489, and the opinion of the Circuit Court of Appeals is reported at 74 Fed. (2d) 576.

Jurisdiction.

Judgment was rendered in the Circuit Court of Appeals on February 11, 1935. The petition for certiorari was filed in this Court on February 16, 1935, and granted on March 4, 1935. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Statute Involved.

This case involves the constitutionality of Section 75 of the National Bankruptcy Act of July 1, 1898, as amended by the Act of June 28, 1934, commonly known as the Frazier-Lemke Amendment. 11 U. S. C. A., Sec. 203 (s), June 28, 1934, C. [illegible], 48 Statutes, 1289.

Statement of the Case.

Respondent during all the time referred to herein was, and still is, a farmer. He was, and still is, engaged primarily in farming in Christian County within the Western District of Kentucky. During all the time herein mentioned he was, and now is, insolvent and unable to pay his debts as they mature. He is a bankrupt (R. 8-9, 12).

The petitioner is the holder of two real estate mortgages in the aggregate amount of $9,000 executed and delivered by respondent. The first mortgage was given on August 2, 1922, to secure the payment of a certain promissory note of even date therewith in the sum of $8,000, which respondent borrowed from petitioner. Payments were agreed to be made as follows: A preliminary interest payment at 6% per annum from date of note and mortgage to March 1, 1923, in the amount of $278, and thereafter 65 semi-annual payments of $238 each on September 1 and March 1, each year, and a final payment of $233.50 on March 1, 1956. Provision is made for a reasonable attorney's fee in case of foreclosure. The mortgage contains covenants binding the mortgagor to pay taxes and keep the buildings insured. The mortgage provides for foreclosure in case of default with respect to any of such payments or the performance of any of the conditions, covenants or agreements contained in the said note and mortgage. The mortgage was duly recorded (R. 15-24).

The other mortgage was executed and delivered on January 30, 1924, to secure the payment of a certain promissory note of even date therewith in the sum of $1,000, which respondent borrowed from petitioner. Payments were agreed to be made as follows: A preliminary interest payment at 6% per annum from date of note and mortgage to March 1, 1924, in the amount of $5, and thereafter 65 semi-annual payments of $35 each on September 1 and March 1,

each year, and a final payment of $29.23 on March 1, 1957. In addition to the covenants and agreements contained in the first mortgage, it provided that this mortgage "shall stand on an equality" with the first mortgage and that a default under the first mortgage shall mature this second mortgage. This mortgage also was duly recorded (R. 25-35).

Respondent made the payments due under the first note and mortgage to and including March 1, 1932—a period of over 10 years. He defaulted on the payments due September 1, 1932, March 1, 1933, September 1, 1933, and March 1, 1934. He did, however, on December 24, 1932, pay $9.55 to apply on interest (R. 24). He made the payments due under the second note and mortgage to and including September 1, 1932—a period of over 8 years. He defaulted on the payments due on March 1, 1933, September 1, 1933, and on March 1, 1934, of the second mortgage (R. 34-35). In addition to failing to make the payments referred to, respondent further defaulted by failing and refusing to insure the buildings on the mortgaged land against loss by fire. Thereupon petitioner procured such insurance by paying a premium of $82 therefor. Respondent also defaulted the payment of the taxes levied and assessed against said real estate for the years 1931, 1932 and 1933, which said taxes have remained delinquent and unpaid (R. 35).

On June 5, 1933, the petitioner declared the entire indebtedness evidenced by the 2 notes immediately due and payable, and on June 23, 1933, commenced a foreclosure suit in the Circuit Court of Christian County, Kentucky, to foreclose the said mortgages by reason of respondent's defaults. It claimed as of that date: (1) the sum of $7,063.43 on account of the note and mortgage of August 2, 1922, together with interest thereon at the rate of 6% per annum from March 1, 1932, until paid, less the $9.55 previously paid on interest and (2) the sum of $891.21 on account of said note and mortgage dated January 30,

1924, together with interest thereon at the rate of 6% per annum from September 1, 1932, until paid (R. 34).

On September 27, 1933, petitioner moved the Circuit Court of Christian County, in said foreclosure suit, to appoint a receiver to take charge of the mortgaged property. At that time the Conciliation Commissioner for Christian County under Section 75 of the Bankruptcy Act as amended by the Act of March 3, 1933, interposed objections to the appointment of the receiver upon the grounds that he was informed that respondent desired to avail himself of the benefits of said Section 75, as so amended, the same being the so-called Agricultural Compositions and Extensions Act. Thereupon the court declined to appoint a receiver and stayed the foreclosure suit for such time as might be necessary for respondent to proceed under said Section 75 of the Bankruptcy Act (R. 42).

Thereafter, on October 20, 1933, the petitioner made a motion for judgment in said suit upon the grounds that respondent (1) had filed no pleading or defense to the petition for foreclosure and (2) had taken no steps to avail himself of the Emergency Farm Mortgage Act of 1933. We regard the second ground as immaterial here, as did the courts below, and pass over it. Respondent appeared in opposition to the motion for judgment, stating that he still desired to commence proceedings under said Section 75. Thereupon the court refused to enter judgment (R. 42).

On October 23, 1933, the Conciliation Commissioner of Christian County filed an intervening petition praying that the court take no further action until respondent shall have proceeded under said Section 75 and the final disposition of his case in the Federal Court (R. 42-43).

Then on February 26, 1934, no proceedings having been taken by any of the parties meanwhile, respondent filed in the United States District Court for the Western District of Kentucky his petition under said Section 75 of the Bank-

ruptcy Act, as amended by the Act of March 3, 1933, for a composition and extension. This Act is the so-called Agricultural Compositions and Extensions Act. Petitioner did not consent to the proposed composition and extension. The matter was referred to the Conciliation Commissioner of Christian County. Respondent filed his inventory in the time and form required by law. He was examined at the first meeting of creditors on March 23, 1934. He failed to secure the acceptance of a majority in number and amount of all his creditors affected thereby to the proposed composition and extension (R. 43, 10).

On June 30, 1934, the Circuit Court of Christian County, Kentucky, entered judgment in favor of petitioner and against the respondent and his wife, who joined with him in the notes and mortgages, sustained the mortgages as a first lien upon respondent's farm and ordered the property sold by the Master Commissioner (R. 44).

Before the sale could be had, respondent, on August 6, 1934, filed in the United States District Court below an amended petition under the Frazier-Lemke Act, praying (1) to be adjudged a bankrupt and that the further proceedings in the matter be had under and pursuant to Subsection S of Section 75 of the National Bankruptcy Act, as amended by the Act of June 28, 1934; (2) that all his property be appraised, that his exemptions under the State law be allowed and set aside to him, and "that he be allowed to retain possession of all of the remainder of his property and pay for the same under the terms and conditions set forth in Paragraph 3 of Subsection S of Section 75 of the National Bankruptcy Act, as amended June 28, 1934"; and (3) that, if "the lienholder" (meaning petitioner) shall refuse to consent to such retention of possession, and the purchase of said property as prayed, the court shall set aside to re-

spondent his exempt property and stay all proceedings for a period of 5 years, during which respondent shall retain possession of all his property under the control of the court, provided that the respondent pay a reasonable rental, annually, as required by law, for that part of the property of which he shall have retained possession, and that at the end of the said period of 5 years, or at any time prior thereto, respondent may pay into court, in the manner provided by law, the appraised value of the property of which he retains possession and apply for his discharge as provided by law. A second amended and substituted petition for the same relief was filed by respondent on November 10, 1934 (R. 11-14).

The referee appointed appraisers (R. 68), who appraised respondent's property and fixed the fair and reasonable value of the mortgaged property at $4,445.00 (R. 69-70, 87). The petitioner in open court offered to pay $9,205.09 in cash for the mortgaged property (R. 72), which the referee stated he could not consider, and was bound to reject, because if the offer were accepted, if cash were paid, it would be immediately returned to the petitioner in satisfaction of the mortgage debt (R. 72). After the referee had refused to consider the offer, he approved the report of the appraisers, fixed the fair and reasonable value of the property at $4,445.00, and ordered that possession thereof should remain in the respondent, subject to a general lien in the trustee as security for the payment of the value of the property (R. 74). Respondent thereupon requested the trustee to sell him the mortgaged property under the terms and conditions of paragraph (3), of Subsection (s), of Section 75 (R. 76-78). Petitioner refused consent, and filed its written objections thereto (R. 78). Respondent then petitioned the court to stay all proceedings against him for five

years, and to allow him to retain possession upon a reasonable annual rental to be fixed by the court (R. 79). The petion was granted, proceedings were stayed, the petitioner was enjoined from enforcing its mortgage lien for five years, and respondent allowed to retain possession on payment of $325.00 to the trustee in bankruptcy on May 1, 1935, as rental for the first year, with rental for subsequent years to be fixed by the court (R. 80-82).

The appraisers in their report found, and the referee ordered, that respondent was not entitled to any exemption of real estate, and hence no real estate was set aside to him (R. 73). The question of exemptions, therefore, is eliminated from the case. Personal property of the value of $568.00 was allowed to respondent as an exemption by the appraisers and the order of the referee (R. 73).

In its objections filed in the District Court below, petitioner alleged, among other things, (1) that Section 75 of the Bankruptcy Act as amended by the Acts respectively approved March 3, 1933, June 7, 1934 and June 28, 1934, and each of said amendatory Acts, "constitute an invasion of the rights reserved to the States and of the rights reserved to the people by the Tenth Amendment to the Federal Constitution" (R. 47-48); (2) that each of said laws is not within the competency of Congress, because none of them are laws upon the subject of bankruptcies, and therefore each of them violates the Constitution of the United States (R. 48); (3) that each of said Acts is destructive of petitioner's business and constitutes the taking of its property in violation of the due process clause of the Fifth Amendment to the Constitution of the United States (R. 48); and (4) that each of said Acts, and the proceedings had pursuant thereto, denies the petitioner the full faith and credit due to the decree of foreclosure rendered by the

State court, and hence is unconstitutional as in violation of Article 4, Section 1 of the Constitution of the United States. Each of these objections were overruled and the decision was adverse to petitioner (R. 48).

The referee's orders were sustained by the District Court below upon a petition for review (R. 51, 52-67); and an appeal was thereupon taken to the Circuit Court of Appeals for the Sixth Circuit (R. 88-98), which affirmed the District Court (R. 100-112). To review the affirmance by the Circuit Court of Appeals, this writ of certiorari was granted.

In the Circuit Court of Appeals below, petitioner consolidated the first and second objections so as to make one point of them, which we do also in this Court. The point is that the Frazier-Lemke Amendment is not a law upon the subject of bankruptcies, and hence violates the bankruptcy clause of, and the Tenth Amendment to the Constitution of the United States. The fourth objection was abandoned, and was not referrred to in the brief or in the argument, and hence was not passed on in the opinion here for review (R. 104).

Summary of the Argument.

Point I. Section 75 of the Bankruptcy Act of July 1, 1898, as amended by the Act of June 28, 1934, is a law upon the subject of bankruptcies within the meaning of the Fourth Clause of Section 8, Article I, of the Constitution of the United States. It does not deal with matters reserved to the States, and is not in violation of the Tenth Amendment to the Constitution of the United States.

Point II. Section 75 of the Bankruptcy Act of July 1, 1898, as amended by the Act of June 28, 1934, does not deprive creditors of their property without due process of law, and therefore is not in contravention of the Fifth Amendment to the Constitution of the United States.

ARGUMENT.

Point I.

Section 75 of the Bankruptcy Act of July 1, 1898, as Amended by the Act of June 28, 1934, is a Law upon the subject of bankruptcies within the meaning of the Fourth Clause of Section 8, Article I, Constitution of the United States. It does not deal with matters reserved to the States and is not in violation of the Tenth Amendment to the Constitution of the United States.

An Analysis of the Act.

The Act in question applies only to debts existing on June 28, 1934, the date of its enactment. It may be divided into two parts. The first relates to voluntary sales and the second to an involuntary sale with a 5-year stay of foreclosure proceedings.

The provisions relative to voluntary sale require the consent of the lienholder. They provide (1) that if the bankrupt fails to obtain the necessary consent to the terms of the composition or extension, he may be adjudged a bankrupt by the filing of an amended petition; (2) that the property shall be appraised at the fair and reasonable value, not necessarily the market value of the same; and (3) that upon agreement with the lienholders, the trustee in bankruptcy must sell back to the bankrupt all or any part of his property upon the terms specified in the Act. Paragraph 3 of Subsection S of Section 75.

The provisions relative to involuntary sale provide for a stay of proceedings to foreclose any liens for a period of 5 years and that then the sale may be made to the bankrupt without the consent of the lienholder. The law provides (1) that if a secured creditor refuses to consent to such sale, proceedings to enforce liens shall be stayed for a period of 5 years; (2) that the farmer shall retain possession of the property during the 5-year stay, under the control of the court, provided he pays a reasonable rental therefor; and (3) that at the end of, or at any time within, said 5-year period the farmer may obtain full possession and title by paying into court either its original appraised value, or in the case of mortgaged real estate, a reappraised price at the option of the lienholder. The Act provides that the farmer also is entitled to his discharge.

In cases in which lienholders consent to the sale they cannot complain afterwards that the law in question is unconstitutional. In this case there has not been a sale of the farm to the bankrupt. Upon his own petition he has been granted the benefits of paragraph 7, subsection S of Section 75. This judgment, here for review, which conforms to this section, provides (1) for a stay of proceedings to enforce petitioner's mortgage for a period of 5 years; (2) that the respondent shall have and retain possession of the land in question on payment of $325 on May 1, 1935, as rental for the first year, with rental for subsequent years to be fixed by the court; and (3) that the respondent shall have a right to petition for his discharge.

A. The Power of Congress with Respect to the "Subject of Bankruptcies" Comprehends Everything in the Relations of an Insolvent Debtor and His Creditors, Extending to His and Their Relief.

It is claimed by petitioner that the law in question is not a law upon the subject of bankruptcies at all, because it

provides for a stay of proceedings, retention of possession of his property by the bankrupt and an option to purchase by the bankrupt at the end of the 5-year stay period. In this respect it is claimed that a law is not a bankruptcy law which does not dispossess the bankrupt of his property and distribute it speedily and ratably among his creditors.

Respondent contends that the law in question is comprehended within the power of Congress to legislate upon "the subject of bankruptcies." This includes the power to take the bankrupt's property and distribute it among his creditors in payment of their claims in such manner and method as seems best to Congress. The law in question (1) takes the title from the bankrupt and vests it in the trustee; (2) stays enforcement of liens for a period of 5 years; (3) provides for the retention of possession of the property by the bankrupt "under the control of the court," provided he pays a reasonable rental fixed by the court; and (4) gives the bankrupt an option to purchase during or at the end of the 5 years at the appraised value, or reappraised value, at the option of the lienholder. All these provisions relate to and are comprehended within the meaning of the subject of bankruptcies.

It is important to remember that the authorities divide themselves into two classes—those which refer to the meaning of the term in a constitutional sense and those which refer to the meaning and construction of particular statutes. It is necessary to discriminate in this respect in order to understand whether a given authority refers to the essence of the subject or some mere matter of policy contained in some particular law. In *Hanover National Bank* v. *Moyses*, 186 U. S. 181, this Court calls attention to the fact that the limitation of the English bankruptcy acts prior to the adoption of the Constitution, that only traders could take advantage of bankruptcy laws, was not to be taken as of the very nature of such laws, but as a mere

matter of policy of English law. Story, Commentaries on the Constitution, Sec. 1113, which reviews this subject, is cited in support of the text. Of the innumerable authorities to be found in the books, very few deal with the constitutional aspects of the question and most of them involve questions of construction of particular laws.

The power of Congress to legislate with respect to bankruptcies is granted by the fourth clause of Section 8 of Article I of the Constitution, which grants power "• • • to establish • • • uniform laws on the subject of bankruptcies throughout the United States." The exact extent of this power has never been defined. Powers within certain limits have been said to be comprehended within the power of Congress as well as all intermediate legislation within such limits tending to further the objects embraced within them. The language used is indicative of an intent on the part of the framers of the Constitution to grant to Congress unrestricted power with reference to bankruptcy, and this intent and meaning is also to be gathered from the history and the construction of the clause in question.

We believe that the only meaning that can be deduced from the history of the subject is that which Mr. Justice Story stated as his conclusion in the note to Section 1113 of his Commentaries on the Constitution, in which, after an exhaustive review of English, Colonial and State statutes, he says:

> "Perhaps, as satisfactory a description of a bankrupt law as can be framed is, that it is a law for the benefit and relief of creditors and their debtors, in cases in which the latter are unable or unwilling to pay their debts. And a law on the subject of bankruptcies, in the sense of the Constitution, is a law making provisions for cases of persons failing to pay their debts."

The history of the question is an account of the laws dealing with such insolvent debtors. Such laws have no settled principles and their provisions change with the changing conceptions of policy, justice and humanity. They are called bankrupt laws because they deal with bankrupt debtors. We are not at all certain whether the word "bankrupt" is of Roman or French origin. II Blackstone, 473, note says that it probably is derived from the Latin *bancus* or *banque*, denoting the table or counter of a tradesman and *ruptus*, broken, denoting one whose shop or place of trade is broken or gone—a broken trader; others, he says, think it is derived from the French *banque*—bench or table of a tradesman and route, which signifies a trace or track, and that a bankrupt is one who has removed his *banque* leaving only a trace behind. It was used in this sense in the first English Statute on Bankruptcy, 34 Henry VIII, c. 4, which uses the French expression, "those who do make bankrupt."

Thus we find laws relating to debtors containing all sorts of provisions, according to the enlightenment of the particular age. In the Old Testament we read of periodical forgiveness or discharge of debts. In Roman times the terrible laws of the twelve tables were enforced, whereby a debtor's body might be cut into pieces by his creditors, putting the debtor in chains, subjecting him to stripes and hard labor and even selling him and his wife and children into slavery, as well as other punishments. The Christian emperors introduced the law *cessio bonorum*, under which the debtor surrendered his goods to his creditors and thus escaped imprisonment and harsh corporeal punishment. Blackstone tells of this in the section cited, quoting from Justinian.

So, also, Blackstone says bankrupts were regarded and treated as criminals. He says a bankrupt formerly was defined to be "a trader, who secretes himself, or does cer-

tain other acts, tending to defraud his creditors." Bankruptcy laws were laws against bankrupts. The first English bankruptcy act, 34-35 Henry VIII, c. 4, is entitled "An Act Against Such Persons as Do Make Bankrupt." It applies only to traders. It is involuntary. Its terms are so cruel it could not have been otherwise. It provides for seizure of the debtor's body and chattels, that his property "is to be searched, viewed, rented and appraised," and "to make sale of the said lands, tenements, fees, annuities and offices, as much as the same *offender* may then lawfully give." Section VI of the act refers to "creditors of such *offender* or *offenders*." It contained no provision for a discharge, although it contained provisions whereby an honest debtor could escape imprisonment and corporeal punishment.

The Statute of Anne 1705, c. 17, was not much better. It contained many penal provisions and provided that, upon conviction, an absconding debtor "shall suffer as a felon, without the benefit of clergy." It provided for committing bankrupts to jail and dividing their goods among their creditors. In cases in which bankrupts conformed to the act an allowance of 5% "out of the neat produce of the estate" was made to them and they were granted a discharge if a majority of the creditors consented. This act was limited to traders. The act of 5 George II, c. 30, applied to traders, bankers, brokers and factors. It was not until Queen Victoria's time that a comprehensive English bankruptcy law was enacted, applicable to traders and non-traders alike, providing for voluntary and involuntary proceedings and absolute discharge of the debtor, 1869 (32 and 33 Victoria, c. 71) and 1883 (46 and 47 Victoria, c. 52).

The most that can be said of colonial legislation is that colonial laws were of varying content and nomenclature. Some provided for exemption from imprisonment by a surrender of his goods by a debtor and some few for a dis-

charge of the debtor and his goods in the sense now understood. No distinction was made between bankruptcies and insolvencies. Most of the colonial statutes applied to traders only. So the English statutes did until Queen Victoria's time. Roman and Continental European law applied to traders and non-traders alike.

Story, Commentaries on Constitution, Sec. 1111 to 1113.

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The framers of the Constitution were familiar with English, Colonial and Roman law on the subject of bankruptcy by reason of their knowledge of Blackstone and the laws of the colonies. They knew, too, that there was no settled law or practice on the subject of bankruptcy in the separate colonies and that, like other matters of national concern, the whole matter should be dealt with by national legislation. The grant of the bankruptcy power to Congress is remedial in nature. This is apparent from the debates in the Constitutional Convention to which reference is made in *Nelson* v. *Carland*, 1 Howard 265, 269-270. That it was intended to give full, complete, unrestricted and plenary power to the Congress is apparent from the constitutional debates from which Mr. Chief Justice Fuller quotes in *Hanover National Bank* v. *Moyses*, 186 U. S. 181 at page 187. He calls attention to the fears of Mr. Sherman that bankruptcies, in some cases, were punishable with death by law in England and that he did not choose to grant a power by which that could be done here. Gouverneur Morris, conceding this, rejoined that bankruptcy is an "*extensive* and delicate subject." He would agree to it, because he did not fear the abuse of such a power by Congress. Furthermore, the people construed the language to grant such powers because it was proposed in New York

to submit an amendment to limit the grant to traders and permit the States to pass laws for the relief of insolvent debtors. This amendment, of course, was defeated.

The power of Congress to legislate on bankruptcy is unlimited, unrestricted, complete and plenary in all matters that relate to insolvent, non-paying and fraudulent debtors and their creditors, extending to the relief of both, subject only to the limitation that legislation be confined to the subject matter of bankruptcy and is not "so grossly unreasonable as to be incompatible with fundamental law." *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 192.

This Court at an early date, February, 1819, had occasion to consider the scope of the granted powers of Congress with respect to bankruptcy in the great case of *Sturges* v. *Crowninshield*, 4 Wheat. 122. This case was brought in the United States Circuit Court for Massachusetts. Plaintiff sued upon two promissory notes and the defense was a discharge under the act of the State of New York "for the benefit of insolvent debtors and their creditors," which provided for the liberation and absolute discharge of the debtor on surrendering his goods in the manner provided for in the act. It was claimed that the New York law was unconstitutional because (1) it was a bankruptcy law and that Congress alone had the power to legislate on that subject and (2) it impaired the obligation of contracts. It was held that inasmuch as Congress had repealed the National Bankruptcy Act, the State's power to act was revived, but that the law in question impaired the obligation of contracts and was unconstitutional upon that ground. Mr. Chief Justice Marshall said, "That the power [that is to legislate on the subject of bankruptcies] is both unlimited and supreme, is not questioned." (P. 191.) It was contended that Congress alone has the power to legislate with respect to the subject of bankruptcy; because the subject matter is of a national nature and that such power

of legislation is incompatible with State legislation upon the subject matter. He pointed out (p. 193) the futility of trying to discriminate in a constitutional sense between laws on bankruptcy and insolvency, it having been urged that laws which merely liberate the person are insolvent laws and those which discharge the contract are bankrupt laws. He says that if Congress passed a law which discharged the person of the bankrupt, without discharging the debt, he would, "feel much hesitation in saying that this was an insolvent, not a bankrupt act, and therefore unconstitutional." In short, he did not think that the powers of Congress were limited by such distinctions in the light of the history of the subject. He went a step further. He pointed out a distinction always observed with reference to the matter was that insolvent laws operate at the instance of the imprisoned debtor; bankrupt laws at the instance of the creditor. Thus, if it were held that the constitutional grant of power were to be restricted by the usage and recognized distinctions of colonial legislation, a voluntary bankruptcy law would be unconstitutional. He construed the power granted to Congress to empower it to deal with the subject matter of insolvent debtors in a comprehensive manner. He said, in answer to this proposition, "But should an act of Congress authorize a commission of bankruptcy to issue on the application of a debtor, a court would scarcely be warranted in saying that the act was unconstitutional, and the commission a nullity."

In this case it was further pointed out that the same distinction cannot be drawn between laws on bankrupcy and insolvency as between laws on bankruptcy and descents, for example. It was claimed that the power to pass laws on insolvency had been exercised by the colonies, were not comprehended within the power granted to Congress to legislate on the subject of bankruptcies and hence were reserved to the States. The Chief Justice stated that the

power granted to Congress was not so limited. He pointed out that complete power was given to Congress. He said with reference to the attempted distinction and resultant limitation on the power of Congress:

> "But all must perceive that this line must be, in a great degree arbitrary. Although the two systems have existed apart from each other, there is such a connection between them as to render it difficult to say how far they may be blended together. The bankrupt law is said to grow out of the exigencies of commerce, and to be applicable solely to traders; but it is not easy to say who must be excluded from, or may be included within, this description. *It is like every other part of the subject; one on which the legislature may exercise an extensive discretion.*"

Thus was established by this Court in the first case in which the question was discussed the complete, unrestricted and plenary power to deal with the subject of bankruptcy, as including all legislation with reference to insolvent debtors and their creditors, without any limitations growing out of the particular practices and distinction of English or colonial law, all of which were swept away by the comprehensive construction placed on the granted powers to Congress to legislate on the subject of bankruptcies.

Eighty-three years later, in 1902, an attempt was made to have the limitations thus swept away by Chief Justice Marshall in the great case of *Sturges* v. *Crowninshield* adopted as the rule of construction of the power of Congress to legislate on the subject of bankruptcies in the case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181, in which it was claimed that the Bankruptcy Act of July 1, 1898, was not within the power of Congress to enact, because it provided, among other things, that others than traders may be adjudged bankrupts and that this may be done on voluntary petition. If the power of Congress is restricted, as

it was claimed in that case, and as it is claimed here it is limited by the manner in which it has been exercised, the decision must need to have been against the power of Congress. This Court again upheld the power of Congress as including the power to legislate fully and comprehensively upon the subject of bankruptcy, without any limitations, except those of fundamental law—it reiterated the rule laid down by Chief Justice Marshall in *Sturges* v. *Crowninshield.*

The extent of the power of Congress in respect to bankruptcy was called in question in 1843, in the case of *In re Klein,* reported in a note to *Nelson* v. *Carland,* 1 Howard 265, 277. It was claimed in that case that the Bankruptcy Act of 1841 was unconstitutional, because it provided for voluntary bankruptcy upon petition of an insolvent debtor and included others than traders. It was said that under the well understood meaning of the word bankrupt in English law at the time the Constitution was adopted, it meant a proceeding brought by creditors against insolvent debtors to have their property applied in payment of their debts, and that it was never thought that debtors should have it in their power to avoid their debts by bringing a voluntary proceeding. The Court in stating the question for decision said, "If the power conferred on Congress carries with it these restrictions," the Act of 1841 was unconstitutional. It was pointed out in the opinion that it was the purpose of the grant of power to Congress to transfer the power of the several States to Congress, so as to have a uniform system of bankruptcy throughout the Nation. This power of the States, in the absence of the grant of it to Congress, was such, the Court said, that "They may frame a bankrupt law in any form they see proper; this has never been questioned so far as my knowledge extends." Laws of the same import as the Act of 1841 had been passed by the States.

In granting the power to Congress, the framers of the Constitution had in mind both debtors and creditors. At 1 Howard 279, the opinion states:

> "For the present it will only be necessary to say that one prominent reason why the power is given to Congress was to secure to the people of the United States, as one people, a uniform law, by which a debtor might be discharged from the obligation of his contracts, and his future acquisitions exempted from his previous engagements; that the rights of debtor and creditor equally entered into the mind of the framers of the Constitution. The great object was to deprive the States of the dangerous power to abolish debts."

In summation, Mr. Justice Catron, then sitting as Circuit Judge at St. Louis, Missouri, used the very much quoted language found at 1 Howard 277, 280-281:

> "In considering the question before me I have not pretended to give a definition (but purposely avoided any attempt to define) the mere word, bankruptcy. It is employed in the Constitution in the plural, and as part of an expression: 'the subject of bankruptcies.' The ideas attached to the word in this connection are numerous and complicated; they form a subject of extensive and complicated legislation; of this subject, Congress has general jurisdiction; and the true inquiry is—To what limits is that jurisdiction restricted?
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> "I hold it extends to all cases where the law causes to be distributed the property of the debtor among his creditors: this is its least limit. Its greatest is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress.
>
> "With the policy of a law, letting in all classes, others as well as traders and permitting the bankrupt

to come in voluntarily, and be discharged without the consent of his creditors, the courts have no concern; it belongs to the law-makers."

By this test the Frazier-Lemke Amendment is constitutional. It does the least—it distributes the respondent's property. It does the greatest—it discharges him from his debts. All the other provisions of the act are intermediate legislation to further these ends, and are appropriate thereto. These we shall discuss at some length *infra*.

In September, 1844, Mr. Justice Story, sitting as a Circuit Judge in the case of *Everett v. Stone*, 3 Story 446, 8 Fed. Cas. No. 4577, defined a bankrupt in a suit to set aside certain transfers of property fraudulently made in contemplation of bankruptcy as "a broken and ruined trader, according to the original signification of the term; a person whose table or counter of business is broken up, *bancus ruptus.*" The bankrupt in question was a trader. In his commentaries on the Constitution, he held that the grant of power to Congress was unlimited and unrestricted, and would include non-traders as well. Sections 1111-1113.

In 1874, the extent of the power of Congress was again considered in the case of *In re Reiman*, 7 Ben. 455, 11 N. B. R. 21, 20 Fed. Cas. No. 11673, in which it was claimed that the Act of 1874 amending the Bankruptcy Act of 1867, so as to provide for compositions, was unconstitutional as not being a law on the subject of bankruptcy. The Court reviewed the authorities and called attention not only to the grant of power relative to bankruptcies, but also to the last clause of Article I, Section 8, of the Constitution, which grants to Congress power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." The opinion was written by Mr. Justice Blatchford, then a District Judge. He said, "It

cannot be doubted that Congress, in passing laws on the subject of bankruptcies, is not restricted to laws with such scope only as the English bankrupt laws had when the Constitution was adopted." He pointed out that the authorities and practical construction sustained this view. He concluded: "The power given must, indeed, be held to be general, unlimited and unrestricted over the subject."

He defined the subject of bankruptcy as follows:

> "It is not, properly, anything less than the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief."

In holding that the composition act is constitutional, he pointed out that it is not only included within the subject of bankruptcies, but also that it is an appropriate means within the discretionary power of Congress for the execution of the express grant of power to legislate on the subject of bankruptcies.

The decision of Judge Blatchford in the case cited came on for review before Mr. Justice Hunt, sitting as a Circuit Judge, in the case of *In re Reiman,* 12 Blatch. 562, 13 N. B. R. 128, 20 Fed. Cas. No. 11675. It was claimed, on review further, that the composition law was not a bankruptcy law, because it did not require the debtor to surrender his property. Justice Hunt affirmed the decision upon substantially the grounds stated by Judge Blatchford. He said, "Whatever relates to the subject of bankruptcy is within the jurisdiction of Congress; and, to say that the law as existing at the time of the Revolution, or the adoption of the Constitution, shall furnish the rule and limitation of legislation, would take a large part of the subject out of their jurisdiction."

Then in the case of *Hanover National Bank* v. *Moyses,* 186 U. S. 181, *supra,* the question was again reviewed and

the power of Congress to legislate on the subject of bankruptcies was held to be practically without limit, and that the manner and mode of its exercise was in the discretion of Congress.

From all these authorities, the history of the subject and the practical construction placed upon the power granted to Congress to legislate on the subject of bankruptcies, it seems clear that this power comprehends everything in the relations of an insolvent debtor and his creditors, extending to his and their relief, and that the means for executing this power are in the discretion of Congress. It is a general, unlimited, unrestricted and paramount power.

B. Section 75 of the Bankruptcy Act as Amended by the Act of June 28, 1934 (the Frazier-Lemke Amendment), is in Execution of the Powers of Congress in Respect to the Subject of Bankruptcies.

1. Bankruptcy is a legal method of dealing with the problems of the depression.

Bankruptcy is a legal method of dealing with the problems of a depression. Each of the four Federal bankruptcy acts has been the product of depression. The present depression has brought problems which the Congress has thought could not be adequately dealt with under the Bankruptcy Act of July 1, 1898. That law provides primarily for liquidation of assets in the function of distribution and it has worked fairly satisfactorily, except during the present depression. Liquidation has been ruinous during the depression for both debtor and creditor, and the objects of distribution and discharge in bankruptcy have been in large measure defeated. To avoid the ruinous results of liquidation Congress enacted laws which

place their emphasis upon, and have for their purpose, extension, composition, reorganization and rehabilitation.

President Hoover in his message to Congress on February 29, 1932 (printed in Senate Document No. 65, 72d Congress, 1st Session—Strengthening of Procedure in the Judicial System) called attention to this matter. He pointed out the tremendous losses sustained under the Bankruptcy Law as it then was, and pointed out the need for changes such as were later embodied in legislation referred to in the next paragraph. Among other things, he said:

> "The present bankruptcy act is defective in that it holds out every inducement for waste of assets long after business failure has become inevitable. It permits exploitation of its own process and wasteful administration by those who are neither truly representative of the creditor nor the bankrupt."
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> * * * * * * *
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> "The bankruptcy act should be amended to provide remedial processes in voluntary proceedings under which debtors, unable to pay their debts in due course, may have the protection of the court without being adjudged bankrupt, for the purpose of composing or extending the maturity of their debts, of amortizing the payment of their debts out of future earnings, of procuring the liquidation of their property under voluntary assignment to a trustee; or, in the case of corporations, for the purpose of reorganization."

The Chief Justice of this Court referred to this matter in the report of the Judicial Conference on October 5, 1931, in which he stated that the Conference recommended to the Congress, through the Attorney General, the advisability of legislation amending the Bankruptcy Act in other respects as follows:

> "(b) Measures to encourage prompt steps toward liquidation or settlements by insolvent debtors; in mat-

ters of composition; *to obtain extensions of time for the bankrupt to pay;* relating to assignments for the benefit of creditors; to provide relief of wage earners from garnishments or attachments."

Congress has embodied its legislation in several, separate acts to deal with the special problems of those involved in such manner as seemed to it to give individual treatment to each. On March 3, 1933, Congress enacted the amendments to the Bankruptcy Act known as Sections 74, 75, 76 and 77. (11 U. S. C. A., Sec. 202-205.) Section 74 provides for composition and extension of debts of individuals; Section 75 provides for agricultural compositions and extensions; Section 76 extended the provisions of Section 75 to those secondarily liable on obligations covered by section 75 and section 77 provides for the reorganization of railroads engaged in interstate commerce. On May 24, 1934, it passed Sec. 80 (11 U. S. C. A., Sec. 303) relating to municipal debt adjustments; on June 7, 1934, Congress passed Section 77B (11 U. S. C. A., Section 207) extending bankruptcy to private corporations; and finally, on June 28, 1934, it adopted the Frazier-Lemke Bill as subdivision (s) of Section 75 (11 U. S. C. A., Sec. 203 (s)). Each of these laws was adopted as an amendment to the Bankruptcy Law of July 1, 1898; is a part of it and all are to be construed not as independent acts, but as the complete expression of Congress upon the subject of bankruptcy.

By these laws Congress seeks to adapt the great power which it possesses to legislate on the subject of bankruptcies to accomplish great public purposes. By a shift in procedure from mere liquidation, which has proved ruinous because of depression conditions, to composition, extension, reorganization and rehabilitation, attempt is made to use the great powers of distribution and discharge so

as to protect the creditor to the full value of the bankrupt's estate, to relieve debtors from the terrible burden of debt, which is aggravated and from which there seems to be no hope of timely relief by reason of the depression, and finally to discharge the debtor in a condition, financial and otherwise, to take his place in his calling of business.

The use of the power to enact laws on the subject of bankruptcies to accomplish these purposes is established by the repeated decisions of this Court. A varying importance has been attached to the respective functions of distribution and discharge depending on the subject matter being considered in the particular decision. Discharge is said to be a matter of great importance and that is of great public concern that the debtor should be discharged so he can start afresh, freed from his burden of debt and restore him to his calling and business. It is true that some few cases hold that discharge is of only minor importance. Such cases are *Wilson* v. *City Bank of St. Paul*, 17 Wall. 473, which holds that distribution is the primary and discharge the secondary purpose; *U. S.* v. *Fox*, 95 U. S. 670, which holds that distribution is the principal and discharge an incidental object, and *Pirie* v. *Chicago Title & Trust Co.*, 182 U. S. 438, which holds that equality of distribution is the principal object "so far as creditors are concerned." There are numerous cases which place about equal emphasis on distribution and discharge. These hold that the purpose of bankruptcy to convert the assets of the bankrupt into cash for distribution among creditors and then to relieve the honest debtor from his burden of debt and permit him to start afresh free of the obligations and responsibilities consequent on his business misfortunes. Comprehended in this class are such cases as *Neal* v. *Clark*, 95 U. S. 704, same volume and term as

U. S. v. *Fox, supra; Traer* v. *Clews,* 115 U. S. 528, 541; *Wetmore* v. *Markoe,* 196 U. S. 68, 77; *Burlingham* v. *Crouse,* 228 U. S. 459, 473; *Williams* v. *U. S. F. & G. Co.,* 236 U. S. 549, 554-555, and *Maynard* v. *Elliott,* 283 U. S. 273, 277.

The function of discharge has come, however, to be of increasing importance. It is of the utmost importance in times of great economic distress and emergency. The debtor should be discharged in such condition that he can resume some calling or business. By enabling the farmer to save his farm and home by the method of distribution adopted in the Frazier-Lemke Amendment, and then discharging him so he can pursue his business of farming, is for the public good and of highest public concern. Many decisions of this Court emphasize the importance of discharge favorable to resumption of vocation or business. In the case of *Hanover National Bank* v. *Moyses,* 186 U. S. 181, 192, it is said that the matter of discharge of the debtor "is a matter of public concern." In *Stellwagen* v. *Clum,* 254 U. S. 605, 617, Mr. Justice Day states that discharge is "a main purpose of the act" and "Our decisions lay great stress upon this feature of the law—as one not only of private but of great public interest, in that it secures to the unfortunate debtor, who surrenders his property for distribution, a new opportunity in life." In *Local Loan Co.* v. *Hunt,* 292 U. S. 234, the question for decision was the jurisdiction of the court of bankruptcy to entertain an ancillary suit to enjoin actions in the State courts to enforce against the bankrupt's employer assignments by the bankrupt of wages earned after adjudication which had been assigned long prior thereto as security for indebtedness discharged in the bankruptcy. At page 244, this Court says:

> "This purpose of the act has been again and again emphasized by the courts as being of public as well

as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."

Again, at page 245, it is pointed out that the wage-earner must be permitted to have the full benefit of his discharge and be relieved of this assignment, so that he may be free to receive his wages, "not only because it is a fundamental private necessity, but because it is a matter of great public concern." In point also is the very interesting case which holds the same as the *Hunt* case and is cited therein, *Hardie* v. *Swofford Brothers Dry Goods Co.* (5th C. C. A.) 165 Fed. 588, 20 L. R. A. (N. S.) 785.

Distribution and discharge are so used in the Frazier-Lemke Amendment as to secure the full benefits of bankruptcy to creditor and debtor alike. It gives the creditor everything any bankruptcy act can give him; it gives the debtor a discharge that enables him to go on with his farming. This is of private importance to him and of public importance to the nation.

2. The Frazier-Lemke Amendment is a bankruptcy measure for dealing with the debt problem of the farmer during the depression.

The Frazier-Lemke Act is a means of executing the power of Congress with respect to the subject of bankruptcies so as to deal with the problem of farmers' debts. The occasion for the enactment of the law was the pressing and urgent need for relief for the farmer and his inability to pay his debts with consequent loss of farms and homes through wholesale mortgage foreclosures. Congress possessed the power to pass the needed legislation to supple-

ment the National Bankruptcy Act of July 1, 1898, which was inadequate to the needs of the occasion. The Frazier-Lemke Amendment has adapted bankruptcy law to the problem to give needed relief. Each of these propositions shall be dealt with separately.

(a) There was need for a bankruptcy law to deal with the special probems of the farmer's debts.

(1) The economic conditions and emergency are a sufficient basis for the Act.

In considering the constitutionality and construction of laws it is always important to know the evil sought to be remedied, the claimed power of the legislature to enact it and the means used to execute this power. We are met with the challenge that the Frazier-Lemke Act is not a bankruptcy law for the reasons already stated. We answer this challenge by the claim that it is a law on bankruptcy and that the Congress has the power to enact it and that the only limitation on the power is that stated in *Hanover National Bank* v. *Moyses*, 186 U. S. 181, that a bankruptcy must not be so grossly unreasonable and arbitrary as to be incompatible with fundamental law.

The criterion is not one of unyielding rigidity or narrow conception. If the facts with which Congress was confronted or the problems were such as to justify a belief that the law in question would afford a remedy, then it cannot be said to be incompatible with fundamental law.

The emergency existing at the time of the enactment of the law, and for a long time previous thereto, is to be considered in connection with the question of the extent to which and the means by which the constitutional power to amend a law upon the subject of bankruptcy is exercised. It having been shown that the bankruptcy laws are for the benefit of creditors and debtors alike and that the Congress

has unrestricted power both as to the extent of the exercise of the power and unlimited choice as to the means to be used, it is proper, if not its bounden duty, that the Congress should have considered the actual conditions existing at the time the law was passed and under which it was to operate and which would inevitably be encountered in its administration.

Probably the conditions then existing are best portrayed and appraised by the United States Department of Agriculture in the Yearbook of Agriculture, 1933. At page 91 thereof it is pointed out that the farmer has been "specially hard hit" because costs have not fallen with prices received by farmers for their products, and that the farmer has been the victim of the depression since 1921. Farm income fell from $12,000,000,000 in 1929 to $5,000,000,000 in 1932. "Farmers received for their 1932 crop 60% less than they received for a similar crop before 1929." (Yearbook of Agriculture, 1933, page 93.) The national income fell from $91,000,000,000 in 1929 to $55,000,000,000 in 1932 (*id.*, page 93.) At page 94 thereof we find the statement that between September, 1929, and September, 1932, the average of prices received by farmers at the farm declined 58%; grain fell 69%; cotton 61%; meat animals 58%, and dairy and poultry products 51%. At wholesale markets, the average of prices of farm products declined 50%. The report points out the effect of these factors on the exchange value of farm products and in other respects. We quote pages 94 and 95 thereof:

> "Exchange Value of Farm Products Lowest in Sixty Years.—In the same period prices of non-agricultural products declined only 25 per cent and prices paid by farmers for the things they usually buy declined during this interval from 155 per cent of their pre-war average to 108 per cent, hardly enough to counteract the much greater decline in prices received. Conse-

quently, the exchange value of a unit of farm products was only 56 per cent of the pre-war level in September, 1932, compared with 91 per cent in 1929. On the same basis, a bushel of wheat exchanged for only 37 per cent as much, 100 pounds of hogs for 42 per cent, a pound of wool or a pound of cotton for about 50 per cent, a pound of butter for 72 per cent, and a dozen eggs for 88 per cent. In the case of many farm commodities the purchasing power was lower than at any time during the last 60 years.

"The ratio between prices and costs has now become disastrous. While farm-commodity prices at the beginning of 1933 had fallen until they were about half of the pre-war prices, relatively fixed farm expenses, particularly debt charges and taxes, had declined only slightly. *Farm-mortgage debt in 1932, in comparison with gross income, to say nothing of net income, was between three and four times as heavy as before the war.* Taxes had more than doubled and it took about four times as many units of farm products to pay them. Mortgage interest and taxes combined absorbed almost 25 per cent of the gross farm income in 1932, as compared with only 7 or 8 per cent before the war and 11.2 per cent in 1929.

"Effects Are of Far-reaching Nature.—The 1929-1932 general depression has thus further aggravated the farm situation, and the inability of a large percentage of farmers to meet their overhead or fixed charges has brought far-reaching results. A rapid decline in farm-land values has reduced the farmer's equity in his property and has weakened country and city lending institutions. Mounting tax delinquencies have caused large areas of land to revert to the ownership of counties and States. Thousands of farmers have reverted from ownership to tenancy. The widespread inability to pay mortgage interest and principal when due has resulted in a great increase in forced sales of farms, mortgage foreclosures, and in the voluntary release of farm land to creditors. Hundreds of thousands of farmers have been forced to a lower

standard of living in which food and shelter are the chief reward for labor and investment. The normal escape from these unremunerative conditions has been shut off by lack of employment opportunities in other occupations. In fact, the unprecedented volume of city unemployment has led to a movement of population to the country, and this movement has reduced the city demand for commercial farm products and has added inopportunely to the current difficulties of adjusting farm production to curtailed demand.

"Some of the readjustments that have already occurred tend to exert long-time influences on agriculture. The sharp reductions in farm-labor costs and in costs of certain raw materials and supplies used in production, while they have helped farmers during the period of falling receipts, indicate a much lower cost basis for agricultural production. The lower level of land values is another factor in lowering future production costs.

"Furthermore, the economic forces that have created the unusually wide gap between farm and nonagricultural prices are not readily removed. These forces include: Costs of transportation and processing that remain relatively inflexible during a period of general inflation; the inability of farmers to make drastic adjustments in output, which creates a condition of relative abundance of farm products in contrast with the sharp curtailment in industrial production, the latter tending to sustain industrial prices and at the same time to retard the domestic demand for farm products; a shift in population from cities to farms that not only reduces consumer demand but also adds to the total supply of farm products; increased agricultural production abroad which tends to maintain an abundance of agricultural products throughout the world and to reduce our export demand; and a slowing down in the rate of population growth which affects long-time domestic demand prospects, particularly for food products.—L. H. Bean, Bureau of Agricultural Economics."

The former Secretary of Agriculture, Honorable Arthur M. Hyde, discussed these economic conditions in his annual report to the President, which is published at pages 1 to 89, inclusive, of the Yearbook of Agriculture, 1933. At pages 3 to 5 thereof, inclusive, he discusses farm prices and purchasing power, gross farm income, net incomes, capital account and the problem, which the law in question seeks to deal with—namely, mortgage indebtedness. He said:

"*Gross Farm Income.*

Gross farm income from agricultural production in the United States in 1932 will be lower than it was in 1931. Gross income in 1931 was $6,955,000,000 compared with $9,403,000,000 in 1930 and $11,950,000,000 in 1929. These changes represent a decline of more than 40 per cent in two years.

"*Net Incomes.*

Net farm incomes will probably decline proportionately more than gross farm incomes this year, just as they did in 1931 and 1930, since the expenses of production have declined far less than prices of farm products. In 1930, out of a gross income of $9,406,000,000, the farmers, after paying expenses of production, interest, rent, and taxes, had $3,553,000,000 left as a return for their capital, management, and labor. In 1929 the net income for capital, labor, and management was $5,853,000,000. The average farm operator that year, after paying expenses of production, interest, rent, and taxes, had about $847 left. The average net return fell to $566 in 1930 and to $342 in 1931. Feeds, hired labor, and machinery are the principal items on which farmers in the last few years have been able to cut down their expenses. They have had little relief from interest and taxes.

"*Capital Account.*

Agriculture has also lost heavily in its capital account. The total value of all capital employed in agri-

cultural production as of January 1, 1932, was $44,339,000,000, as compared with $58,249,000,000 on January 1, 1930, a decline of about 24 per cent. Farmers' equities in their property decline along with their current incomes, so that their financial security as well as their standard of living is impaired.

"Farm real-estate values continued to fall in nearly all parts of the country. In the 12 months ended March 1, 1932, the declines exceeded those of the previous year. The department's index showing the estimated per acre value of farm land for the United States dropped from 106 per cent to 89 per cent of the pre-war (1912-1914) average. More than two-thirds of the States reported lower than pre-war levels. Only two geographic divisions, the New England and the Pacific, with indexes of 116 and 118, respectively, reported average values higher than those of the pre-war period. Average values fell 3 per cent below the pre-war level in the east and west South Central States, 4 per cent below that level in the South Atlantic and Middle Atlantic States, 18 per cent below in the Mountain States, 19 per cent below in the west North Central States, and 27 per cent below in the east North Central States.

"The current decline in farm-land values started not from a relatively high level but from a relatively low level. In that respect it differs from the first post-war slump. In large measure the decline in farm land values after 1920 liquidated a wave of speculation. The current decline reflects a writing down of values to correspond with a lower commodity price level.

"*Mortgage Debt.*

Mortgage debt presses upon American agriculture to-day with exceptional severity. Total farm-mortgage debt in the United States increased from $3,300,000,000 in 1910 to $7,900,000,000 in 1920, and to $9,500,000,000 in 1928. Since then it has fallen slightly, largely as a result of foreclosures. Interest and attendant costs on this mortgage debt in 1930 represented a fixed annual charge of $568,000,000. While

the capacity to carry this charge has declined greatly in the last two years, the charge itself remains about the same. In 1931 interest on the farm-mortgage debt absorbed about 8 per cent of the gross farm income, compared with 4 per cent in 1920 and 3 per cent in 1910. In recent years an increasing number of farms have been mortgaged. The department estimates that in 1930, 40 per cent of all farms were mortgaged. The 1930 census reported 42 per cent of all owner-operated farms as mortgaged, compared with 37.2 per cent in 1920.

"Foreclosures are all too prevalent. They are blighting the hopes of men who can get as much out of the land as anyone could. Keeping efficient farm owners on their own property and in their own homes is to the interest of both debtors and creditors. It is also to the interest of the Nation. Much mortgage indebtedness has grown burdensome from forces largely outside the farmer's control. I shall later show how Federal aid in the field of farm credit has helped. But more needs to be done. The powers of our credit institutions must be broadened and *legal restrictions relaxed so that in an emergency like the present one, efficient farmers can be given a fighting chance to hold their homes.*"

He pointed out further that taxes are about 166% higher than they were in 1914 and that the tax load is extremely onerous. He said further:

"As in the case of the mortgage-debt burden, its real weight has been doubled by falling prices since 1929. It takes more than four times as many units of farm produce to pay the farm tax bill now as it took in 1914. In 1931 taxes on farm property absorbed about 11 per cent of the gross farm income, compared with only 4 per cent before the war."

He pointed out that these conditions resulted not only in very material loss and decrease of the farmer's income,

with no substantial decrease in the costs of things purchased by farmers, increased taxes, loss of purchasing power, depreciation of the value of farm produce both in terms of money and other commodities for which they might be exchanged and a resultant inability to pay principal and interest on farm mortgages and taxes, resulting in wholesale foreclosure of mortgages, all due mostly to "forces largely outside the farmer's control"; but also that the means for refinancing farm mortgages were not then available. This last mentioned fact was due to a number of causes among which are (1) that local banks lost their lending power in large measure because of the farmer's loss of income, (2) that the life insurance companies, the chief lenders on farm-mortgage security, had to meet unprecedented demands for policy loans and depreciation in their railroad and industrial securities, and (3) Federal land banks and joint stock land banks found the bond market unsatisfactory for the sale of additional securities. These factors he discussed as follows:

"*Credit Conditions.*

It was inevitable in the generally depressed condition of agriculture that farm-credit facilities should be strained. Local credit agencies, such as country banks and merchants, depend for their lending power on a flow of income into their communities. When this flow dwindles or dries up, outstanding loans can not be collected and new loans can not be made. What ordinarily amounts to a revolving fund ceases to revolve. Farm incomes from the production of 1931 dropped so low that country banks generally could maintain only a small fraction of their lending power. These banks, moreover, had to stand the additional stress of the customary outflow of agricultural funds in mortgage interest, tax payments, and so forth.

> Agricultural distress affected the supply of mortgage credit as well as the supply of bank credit. Delinquent interest payments and a high foreclosure rate impressed mortgage lenders unfavorably. Special factors in the investment market made matters worse. Life insurance companies, the chief lenders on farm-mortgage security, had to meet an exceptional demand for policy loans; also the value of their railroad and industrial securities declined drastically. The Federal land banks and the joint-stock land banks found the bond market unsatisfactory for the sale of additional securities. The credit stringency tended still further to lessen the earning power of the farmers. It handicapped them in readjusting their crop programs. It prevented the efficient utilization of feed and of labor time. Often, indeed, lack of production credit compelled the premature selling of livestock."

He pointed out further that many Federal agencies had come to the relief of the farmer, but that they had failed to give the assistance which was needed. He pointed out that the Reconstruction Finance Corporation had appropriated $125,000,000 for Federal land banks and that the Glass-Steagall bill permitted Federal reserve banks to use the direct obligations of the United States Government as collateral for Federal reserve notes, and thus released gold for other credit purposes; that loans had been made to farmers for relief purposes and that various corporations had been set up to make loans to farmers in the emergency. All of these, however, had failed to solve the problem or to materially assist the farmer, in dealing with the problems with which he was then confronted.

In spite of all measures to alleviate conditions, they became worse. Farm prices dropped from an index value per acre of $117 in 1928 to $89 in 1932. There was practi-

cally no market for the sale of farms. The number of voluntary sales and trades of farms shrunk from 26.3 farms per 1000 in 1928 to 16.2 in 1932. During this same period the farmer's inability to pay his mortgage debt manifested itself by an increase of forced sales and related defaults from 22.8 farms per 1000 in 1928 to 41.7 farms per 1000 in 1932. The number of foreclosures practically doubled in the period between 1928 and 1932, and thus a bad condition became immeasurably worse. (Tables 469 and 470, page 733 Yearbook of Agriculture, 1933.) It is probably safe to say that at least 95% of the forced sales and foreclosures did not involve cash transactions, but were simply sales in form to liquidate mortgage indebtedness and amounted simply to a taking of the mortgaged property by mortgagees to satisfy the debts. Most of them were by insurance companies and other large lenders.

These conditions were aggravated and made worse by subsequent events. Between the spring of 1933 and the summer of 1934 (the law in question was approved on June 28, 1934) prices continued to decline, foreclosures increased in most parts of the country and some parts of the country were suffering from unprecedented crop failure due to drouth and crop destruction due to grasshoppers and other plagues. The entire region between the Mississippi River and the Rocky Mountains, including large areas east of the Mississippi River, were so afflicted.

In one of the first cases to arise under this law in August, 1934, decided November 8, 1934, we find these conditions reflected in the opinion of Judge Atwell, United States District Judge, in *Paine et al.* v. *Capitol Freehold Land & Trust Co. et al.*, 8 Fed. Supp. 500, in which he said:

> "A trial court who sits in this portion of the state, where for several successive seasons the whole face of

the earth has been blighted by drouth, is forced to view with complacency almost any effort for the relief of those who depend upon the fruit of the soil for a livelihood.' Likewise the mind of the judge must be open for the appropriate reception and careful study of any properly fathered effort for the relief of the present situation."

It was to deal with conditions of this sort largely that the Frazier-Lemke amendment to the Bankruptcy Law was passed. Two of the factors that carried most weight with the Congress were the emergency and the fact that it would take some considerable time to recover from it. The emergency caused wholesale foreclosure of mortgages on farms and homes and untold loss to our farmers. There was no market for farm lands and many lenders upon mortgage security were becoming the owners of lands. They in turn are unable to dispose of these lands because there is no market for them. To meet this situation the law in question provides that the farmer himself shall have the right and opportunity to purchase the lands at a fair value to be determined by an appraisal and to pay for the same over a reasonable period of time, which is 5 years. As a matter of practice for many years most property sold upon contract for deed requires the payments to be made in some period varying from 3 to 10 years. Most of them provide a 5-year period. The law in question has reasonable provisions adapted to the conditions with which the American farmer and all other people are confronted. (2) The Frazier-Lemke Amendment was enacted to deal with these economic conditions and this emergency. This law was passed to deal with this emergency. By its terms it applies only to debts existing as of March 3, 1934, Section 75, S (6) and

no petition for relief can be filed after March 3, 1938, Sec. 75, C.

The power of distribution of the bankrupt's estate is invoked so as to give the creditors everything to which they are entitled under the most favorable bankruptcy law. It gives them the full appraised value in money of the bankrupt's property. The law, however, effects a change in former methods of liquidation. Instead of dispossessing the farmer and selling to a stranger, provision is made for continued possession of the farmer and sale to him of his own farm at its full appraised value. The creditor has never been entitled to the property *per se*. It passed to the trustee. The creditor received his *pro rata* share of the cash derived from a sale of the property. He still receives exactly that under this law. The only difference is the sale to the farmer. Just as it was no concern of the creditor under the general bankruptcy who bought the property from the trustee, so also is it none of his concern under this law that such sale is permitted to be made to the farmer bankrupt.

Such sale to the owner, the farmer bankrupt, is a proper exercise of the bankruptcy power of distribution. It meets the needs of actual conditions. When the law was passed the nation was, and even now is, passing through the severest depression in its history. Values of all property, and particularly farm property, had not only sunk to unprecedented low levels, but there was no market for it even at these levels. There was need for any measure to conserve values, for debtor and creditor alike. Finances were not available and renewal of mortgages was almost entirely impossible. The wholesale foreclosure of mortgages failed to bring creditors the amounts due them and they bid in

properties. These properties were worth only the market price in any event and that was all the mortgagee received. It resulted, however, in wholesale loss of farms and homes, rendered the owners homeless and tended to convert our home owning farmers into mere tenants and homeless, impoverished citizens. It resulted in untold loss to the farmer as well as untold suffering. It was, therefore, wise to let the farmer have his farm and the mortgagee its appraised value.

Thus, the farmer, when he was discharged was able to continue his farm operations, and support himself and family. He is enabled to rehabilitate himself and thus not only his welfare, but the public interest also, is promoted. His status as a home owner, and as sturdy, industrious, thrifty, independent and loyal citizen is thus assured. He is thus saved from being reduced to a beggar, a mendicant, a mere homeless man in search of home and a place to rent at the mercy of his landlord and a victim of every change.

It has been the traditional policy of this nation to encourage such a class of land owning farmers. Congress disposed of the public domain with this idea in view. It enacted the homestead laws to give or sell for a nominal consideration the public lands to actual settlers. It commonly provided in land grants that the grantees would in turn sell the land to actual settlers. Such a law was construed in *Oregon & California R. R. Co.* v. *U. S.*, 238 U. S. 393. The purpose of Congress was not simply to give away the public domain. It had a great public purpose in view. It was thought that actual owners of the land upon which they lived would be the finest type of citizens, and that by making provision therefor the basis would be laid for a great and prosperous nation. It was thought these owners would be bound to the land by interest and sentiment—interest because the land is their property and

investment, increasing in value as they worked and improved it, with the thought of leaving it to their families, and sentiment, as being the place where the farmer and his family lived their entire lives, with all that this implies in love, and sentiment and affection; the home-place where his children were born, and raised and married—some even might die there. Such a class of citizens it was thought would be industrious, thrifty, virtuous and loyal citizens. It was believed also that with such a citizenry, commerce would prosper, cities spring up and a great nation built. It seems to be generally conceded that the purposes of Congress have been successful beyond the most sanguine dreams of those who so wisely planned for the settlement and building of the nation.

The emergency which we have just described threatens the whole fabric, which has been so well built. The foreclosure of the mortgage and taking the farm away from the farmer makes him just exactly the opposite of what it was intended he should be. He becomes a tenant instead of an owner, a man without a home instead of a home owner. It makes a poor peasant out of the American farmer. This results in the destruction of land values, impoverishes our people and is harmful to commerce and industry.

These conditions were noticed by this Court in *Home Building and Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398, 446, and held to be a sufficient basis for the Minnesota Mortgage Moratorium law.

If the Frazier-Lemke amendment can afford a remedy in some measure for this problem its enactment is justified. Governmental power may be exerted "to safeguard the vital interests of its people." *Home Building and Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398, 434-435. In the same case it was held that economic interests may justify the interposition of governmental authority, p. 437, and that reasonable means may be employed "to safeguard the

economic structure upon which the good of all depends," p. 442. All this is justified upon the grounds of public interest and the growing appreciation of public needs.

It is true that in the *Blaisdell* case the Court spoke in respect to the powers of a state government. But, Congress, within the scope of its delegated powers may legislate for the general welfare, just as the states may do under their police power.

That the Judicial Conference had in mind the power of Congress to exercise its powers with respect to the subject of bankruptcy for the public welfare is manifest from the recommendation for provisions to make the discharge in bankruptcy just and effective; to insure a thorough examination of the bankrupt, *with due regard to the public interest involved;* and to discourage fraud and waste.

In *Wilson* v. *New*, 243 U. S. 332, this Court held that the great national emergency growing out of a threatened national railway strike justified the enactment of the so-called Adamson Eight Hour Law for an 8 hour day of work for railroad employees. This case holds that Congress may take cognizance of emergency as the occasion for the exercise of powers granted to it and may use these powers to legislate for the public welfare, considering such emergency.

In *Reid* v. *Colorado*, 187 U. S. 137, it was held that Congress could prohibit the transportation of diseased cattle in interstate commerce. In the *Lottery Case*, 188 U. S. 321, this Court took notice of the evils inhering in lotteries and held that Congress could prohibit transportation of lottery tickets in inter-state commerce. In *Hipolite Egg Co.* v. *U. S.*, 220 U. S. 45, it was held that the Pure Food and Drug Act which excludes adulterated articles from the channels of inter-state commerce, is constitutional and an appropriate exercise of power in that respect. In *Caminetti* v. *U. S.*, 242 U. S. 470, it was held that the Mann Act, pro-

hibiting inter-state traffic in women for white slavery was a proper exercise of the power to regulate inter-state commerce and that the power extended to keeping such commerce free from immoral and injurious uses. So, too, importation of prize fight films in inter-state commerce has been prohibited, *Webber v. Freed*, 239 U. S. 325. The Webb-Kenyon Act regulating introduction of intoxicating liquor into dry states was sustained in *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311. In *Brooks* v. *U. S.*, 267 U. S. 432, the constitutionality of the Dyer Act prohibiting inter-state traffic in stolen automobiles was upheld. The opinion reviews the authorities. Mr. Chief Justice Taft, at p. 436, said:

> "The objection to the Act can not be sustained. Congress can certainly regulate interstate commerce to the extent of forbidding and punishing the use of such commerce as an agency to promote immorality, dishonesty or the spread of any evil or harm to the people of other States from the State of origin. In doing this it is merely exercising the police power, for the benefit of the public, within the field of interstate commerce."

These authorities sustain the use of Congressional power for the public welfare. If the rule were otherwise it would be a sad commentary on our national government and proof of a lack of statesmanship on the part of the framers of the constitution, which will not be admitted.

Congress is not limited in its choice of means in exercising granted powers. It may use both necessary and convenient means and this is true even though the same may partake of other governmental authority, such as the police power. Congress is the sole judge of the means to be used.

Hoke v. *U. S.*, 227 U. S. 308.

Seven Cases v. *U. S.*, 239 U. S. 510.

It was the judgment of Congress that through bankruptcy proceedings the farmer should be given 5 years to rehabilitate himself and save his property. It seems that this was in the discretion of Congress. It seems to be fair and reasonable in view of the problem itself. Other factors confirm the judgment of Congress and justify its action. Among such factors a few may be mentioned.

Voluntary Sales.

Experience has shown that it takes at least 5 years to make payments under contracts for deeds on farms. In most instances the period of payments is nearer 10 years.

Bankruptcy.

The experience with bankruptcy administration has not been such even in normal times and under normal conditions to insure distribution in much less than 5 years. In times of emergency and economic distress it takes longer, because the problem of liquidation is more difficult and slower due to lack of buyers of bankrupt estates.

Various studies have been made of this question. In March, 1930, the so-called Donovan report was published. It was prepared by William J. Donovan, Esq., formerly Assistant Attorney General of the United States. He states that, while the tables of figures published are based on New York City Bankruptcy cases, they have been compared with similar statistics from all over the nation and are fairly representative of the country as a whole.

He pointed out that it took about 2 years to close the average no-asset cases and many 2, 3, 4 or even 6 years. (p. 198-199). An interesting table at p. 354 shows that 5 years for the closing of a bankrupt estate is not at all uncommon. During that period liquidation goes on and distribution is not finally made until the estate is closed. The table is short and is as follows:

"Periods (in days) from filing of petition to close of case.

Liquidation cases.	Average period.	Longest period.	Shortest period.
(a) No asset cases	331.3	2842 (8 yrs.)	61
(b) Nominal assets	620.3	2695 (7 yrs.)	62
(c) Gross assets under $10,000 (exclusive of (a) and (b)	697.7	3100 (8 yrs.)	107
(d) Gross assets over $10,000	1231.6	4419 (12 yrs.)	273
Average, all classes	720."		

We give these figures, as Mr. Donovan does, as facts and without criticism. Congress was undoubtedly familiar with them.

Experience with Federal receiverships in equity has demonstrated that 5 years is not uncommon for the receivership. Courts have taken notice of the fact. In the case of *In re Cope*, 8 Fed. Supp. 778, the Court said of the 5 year stay period in the Frazier-Lemke Act that it was reasonable. It cited the instance of equify receivership and said:

> "We know that in equity receiverships in the federal courts more than five years often elapse before a final sale, during which time the creditors are restrained from enforcing liens."

The statement in the case of *In re Cope* is borne out by the facts in many cases. Reference to a few will illustrate. *Levy* v. *Equitable Trust Co.*, 271 Fed. 49, *Beers* v. *Equitable Trust Co., et al.*, 286 Fed. 878, id. 883, id. 886. This is the Western Pacific receivership, commenced in 1905, terminated in 1923, was pending 18 years.

Trustees Corp., Ltd. v. *Kansas City, M. & O. R. C.*, 18 Fed. (2nd) 765 (C. C. A.). Receivership in this case was begun in 1912 and was terminated in 1925. It was pending for 13 years.

Guaranty Trust Co. of N. Y. v. *M. S. L. Ry. Co.*, 52 Fed. (2nd) 418. This receivership was begun in 1923 and is still pending. This is a period of over 12 years.

Guaranty Trust Co. of New York v. *Chicago Union Traction Co.*, 158 Fed. 913. This is a receivership of the named company and was pending for 8 years, from 1903 to 1911.

Mercantile Trust Co. v. *St. Louis & S. P. Ry. Co.*, 71 Fed. 601. This is a receivership of the named company, commonly known as the Frisco Receivership. It was pending from 1893 until 1900, a period of 7 years.

State Trust Co. v. *Kansas City P. & G. R. Co.*, 120 Fed. 398. This is a receivership of the named company on bill of foreclosure. It was pending 6 years, from 1899 to 1905.

Guaranty Trust Co. v. *Mpls. & St. L. R. Co.*, 33 Fed. (2nd) 512. In this case it is shown that the named railroad formerly was in receivership from June 28, 1888 to October 31, 1894, a period of 6 years.

American Brake Shoe and Foundry Co. v. *N. Y. Rys. Co. et al.*, 282 Fed. 523 (C. C. A. 2nd). This is a receivership of the named company and was pending for 7 years, from 1919 to 1926.

U. S. and Mexican Trust Co. v. *U. S. and Mexican Trust Co. as Trustee et al.*, 250 Fed. 337 (C. C. A. 8th). This is a receivership of the named company begun on March 7, 1912, and terminated on April 3, 1918. It was pending over 6 years.

Central Trust Co. v. *Continental Trust Co.*, 86 Fed. 517 (C. C. A. 8th). This is a receivership of Midland Railway Company. It was begun in 1894 and terminated in 1898. It was pending for 4 years.

Scott v. *Queen Annes Ry. Co.*, 162 Fed. 828. This was a receivership begun in 1904 and terminated in 1908. It was pending for 4 years.

Atchison, T. & S. F. Ry. Co. v. *Osborn*, 148 Fed. 606, which was a receivership begun in 1893 and terminated in 1895. It was pending 2 years.

Lane v. *Equitable Trust Co.*, 262 Fed. 918. This was a receivership which was begun in 1914 and terminated in 1920, a period of 6 years.

These are some examples of the time it takes to administer a receivership. True it is that a railroad receivership is much more complicated and involves a great many more transactions than the sale of a farm. But, on the other hand, experience in bankruptcy has demonstrated that it takes substantially as long to administer an estate in bankruptcy as it does in equity receivership. Under the emergency conditions that we are now confronted with, Congress had every reason to believe that bankruptcy cases would not be disposed of as quickly as in normal times, because of the difficulties involved in liquidation. In determining upon a period of 5 years as a stay, and the period during which the payments are to be made by the farmer to the trustee, it seems that Congress adopted a period that was justified and in keeping with the ordinary practice in dealing with farm lands and the experience that has been had in the administration of bankruptcies and equity receiverships. In the light of these facts it cannot be said that the action of Congress was capricious and arbitrary. It seems that the contrary must be said and that Congress acted fairly and with discrimination, and that the law is based upon actual experience as reflected in the matters to which we have called attention in this brief.

The selection of the powers in bankruptcy is within the province of Congress. Whether this policy is wise or unwise is for Congress to decide, and the Court will not set its judgment against that of Congress. There are no limits in the constitution on the exercise of this power, and the

only one that has been stated is the implied limitation that all laws enacted pursuant thereto must be compatible with fundamental law. We have shown that the Frazier-Lemke law is more than that and that it is a law that is authorized by the terms of the grant and that the remedy is justified by depression conditions and the emergency with which we are now confronted.

(b) Congress has the power to legislate from time to time on the subject of bankruptcies and has the power to pass the Frazier-Lemke Amendment.

It is quite common for those who attack the law here in question to assert that it is not a law on the subject of bankruptcies, because it does not contain those provisions which are usually found in bankruptcy laws. In support of this claim excerpts are quoted from *Wilson* v. *City Bank of St. Paul,* 17 Wall. 473, to the effect that distribution is the primary, discharge a secondary object of bankruptcy, and *U. S.* v. *Fox,* 95 U. S. 670, in which it is said that the object of bankruptcy is "to secure ratable distribution" of the bankrupt's estate among his creditors, that disbution is the principal, discharge an incidental object to be attained. In passing it is proper to note that the later cases have in effect overruled these cases in this respect. They hold that discharge of the debtor is equally important. This has been dealt with, *supra,* where we cited *Neal* v. *Clark,* 95 U. S. 704, *Traer* v. *Clews,* 115 U. S. 528, *Wetmore* v. *Markoe,* 196 U. S. 68, *Burlingham* v. *Crouse,* 228 U. S. 459, *Williams* v. *U. S. F. & G. Co.,* 236 U. S. 549, *Straton* v. *New,* 283 U. S. 318, *Stellwagen* v. *Clum,* 245 U. S. 605, and *Local Loan Co.* v. *Hunt,* 292 U. S. 234.

It is fair to assume that President Hoover in his message of February 29, 1932, must have had the foregoing authorities in mind when he said:

"A sound bankruptcy system should operate—
First, to relieve honest but unfortunate debtors of an overwhelming burden of debt;
Second, to effect a prompt and economical liquidation and distribution of insolvent estates; and
Third, to discourage fraud and needless waste of assets by withholding relief from debtors in proper cases."

It is asserted, nevertheless, that the manner in which the power has been hitherto exercised and statements found in the decisions dealing therewith, are the gauge and set the limits of the constitutional power of Congress to legislate on the subject of bankruptcies. In effect, it appears to us, that this is equivalent to saying that Congress can do only what it has done in times past. The exercise of the constitutional power of Congress is not limited by the manner in which Congress has hitherto exercised it. The power still remains in Congress and the choice of method and manner of its exercise is not exhausted or limited by its exercise in a single, particular respect. The unused powers of Congress with respect to the subject matter of sales of the bankrupt's property may be resorted to in the discretion of Congress.

The extent of the power of Congress to legislate on the subject of bankruptcies is general, unrestricted, unlimited, plenary and paramount. In *Sturges* v. *Crowninshield*, 4 Wheat, 122, 195, Mr. Chief Justice Marshall said it was "unlimited and supreme." *In re Klein*, 1 Howard 277 Mr. Justice Catron said that Congress has general juridiction and that it is a subject of extensive and complicated legislation. *In re Reiman, supra*, Mr. Justice Blatchford said the power is "general, unlimited and unrestricted over the subject." Similar expressions indicative of comprehensive and unrestricted power are to be found in *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426, 430, that it is "paramount;" in

International Shoe Co. v. *Pinkus*, 278 U. S. 261, 265, that it is "unrestricted and paramount," and in *New York* v. *Irving Trust Co.*, 288 U. S. 329, 333 that it is "supreme." The authorities abound in similar expressions.

That a power of such scope is not limited by the extent of its previous exercise and is not exhausted by a partial exercise of it would seem to be self-evident. In *Taubel etc. Co.* v. *Fox*, 264 U. S. 426, the question for decision was whether Congress had conferred on courts of bankruptcy jurisdiction to adjudicate the controverted rights of the trustee and one claiming a valid lien acquired within 4 months by proceedings in a state court. It was claimed by the trustee that the lien in question was void under Section 67, (f) and that the court of bankruptcy had jurisdiction summarily to so adjudicate, and by the lien claimant that the property was in the possession of an officer of the State court and that Congress had not conferred on bankruptcy courts the necessary jurisdiction to adjudicate this controversy. The contention of the lien claimant was sustained.

This Court pointed out that Congress has the power to confer such jurisdiction, that it has conferred jurisdiction only in part as to other matters and can confer complete jurisdiction in its discretion. At page 430, this Court said:

> "Congress has, of course, power to confer upon the bankruptcy court jurisdiction to adjudicate the rights of trustees to property adversely claimed. In matters relating to bankruptcy its power is paramount. Hence, even if the property is not within the possession of the bankruptcy court, Congress can confer upon it, as upon any other lower federal court, jurisdiction of the controversy, by conferring jurisdiction over the person in whose possession the property is."*

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* Foot-note to *In re Cope.*

By the Frazier-Lemke Amendment the Congress is exercising this power which it possesses over bankruptcies. Heretofore it has simply in effect authorized a sale in the ordinary exercise of bankruptcy jurisdiction, Sec. 2, cl. (7). Now, to legislate with respect to a special problem affecting a large class of our people it proposes to exercise this power in a particular manner to solve this problem.

That Congress had the power to pass the Frazier-Lemke amendment to deal with this situation seems to be clear from the nature and the scope of the power itself. This question was decided with respect to the Frazier-Lemke amendment in the case of *In re Cope*, 8 Fed. Supp. 778 by United States District Court, District of Colorado. After adverting to the many respects in which Congress had exercised in part its power to legislate on the subject of bankruptcies, the decision points out that the balance of the power may be exercised at the will of Congress. It said:

> "The fact that Congress has not seen fit in the past to exercise its full power under this constitutional provision does not constitute a valid objection to later amendments that may broaden the scope and effect of the bankruptcy laws."*

The holding in the *Cope* case as to the power of Congress to exercise its power over the subject matter to its full extent and to exercise it in respects in which it has not exercised it hitherto is in accord with a holding of this Court to the same effect as to the power of Congress to exercise in full the power to confer jurisdiction on bankruptcy courts, which Congress has exercised only in part, in the case of *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426.*

In the case of *In re Landquist*, 70 Fed. (2nd) 929, the same contention was made in respect to Section 74 of the Bank-

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* Foot-note to *Taubel* v. *Fox*.

ruptcy Act. It was contended that legislation which does not provide for a *pro rata* distribution of a bankrupt's property among his creditors, and for the discharge of the bankrupt from liability from his existing debts is in fact not bankrupt legislation. Considering this contention the court says:

In *Detroit Trust Co., Trustee* v. *The Thomas Barlum et al.*, 293 U. S. 23, decided November 5, 1934, this rule was applied in admiralty to uphold the Ship Mortgage Act. This Court said:

> "But it did not follow, because this view was taken of the existing law, that the Congress was without power to amend the law so as to enable the admiralty courts to take cognizance of mortgages on ships, and to regulate priorities of liens, in order to promote investment in shipping securities and thus to advance the maritime interests of the United States" (p. 47).
>
> "The authority of the Congress to enact legislation of this nature was not limited by previous decisions as to the extent of the admiralty jurisdiction. We have had abundant reason to realize that our experience and new conditions give rise to new conceptions of maritime concerns. These may require that former criteria of jurisdiction be abandoned, as, for example, they were abandoned in discarding the doctrine that the admiralty jurisdiction was limited to tidewaters. *The Genesee Chief*, 12 How. 443, overruling *The Thomas Jefferson*, 10 Wheat. 428" (p. 52).

In *Schumacher* v. *Beeler* 293 U. S. 367 (decided December 17, 1934) it was held that the courts of bankruptcy have jurisdiction of suits brought by trustees in bankruptcy against adverse claimants of the bankrupt's estate, if the defendant consents to the jurisdiction. This Court, p. 374, said:

> "The Congress, by virtue of its constitutional authority over bankruptcies, could confer or withhold jurisdiction to entertain such suits and could prescribe

the conditions upon which the federal courts should have jurisdiction."

"This case is based on the illogical assumption, that the broad power of the Constitution is limited by congressional legislation on the subject of bankruptcy since the Constitution was adopted. In other words, it is argued in substance that, because Congress has heretofore provided that after adjudication there shall be a pro rata distribution of the net assets and a discharge of the debtor, further legislation cannot be classified as bankruptcy legislation unless it contains those provisions, or is in aid of them. The history of bankruptcy legislation, both in England and the United States does not support this position."

The court then traces the origin and development of various phases of the bankruptcy law and shows how the scope of the law has gradually been extended. The court points out that the Bankruptcy Act of 1867 was amended in 1874 so as to add a provision for composition. Summarizing this historical discussion the court says:

"The present body of federal law on this subject is the result of a gradual growth and development and it is obvious that the object of all of it, for more than ninety years at least, has been the benefit and relief of creditors and debtors in cases where debtors are unable to pay their debts, and the Constitution is sufficiently broad to authorize the use of any reasonable means for the accomplishment of this purpose, so long as the means are uniform in their application."

The court points out that Section 74 provides for the distribution of the debtor's estate and that the extension of time merely affects the form and substance of that distribution. The court points out further that the section tends to further the debtor's discharge from his debt, either by payment or by decree of the bankruptcy court on a *pro rata* distribution. Both of these are recognized purposes of bankruptcy legislation.

The Court refers to the futility of trying to measure the scope of the power of Congress over bankruptcy legislation by the powers heretofore exercised, saying: (p. 933).

> "Where plenary power is given by the Constitution and Congress sees fit to use only a part of it, that fact will not prevent Congress from exercising the full power whenever it chooses to do so. That principle was invoked when our composition statute was enacted as a part of the Bankruptcy Act. It was vigorously attacked for reasons the same as those assigned here or analogous to them and it was held constitutional. *In re Reiman* (D. C.), Fed. Cas. No. 11,673 and Id. (C. C.) Fed. Cas. No. 11,675."

It seems clear that Congress is not limited by previous legislation and may legislate as necessity requires. It had the power to enact the Frazier-Lemke Amendment.

(c) The Frazier-Lemke Amendment is based upon principles of bankruptcy law and is within the power of Congress.

There is really nothing new in the law in question, except perhaps the application of well settled principles of bankruptcy law in a novel way. Because it is simple, may be the reason for so much misconception. Very often it is the obvious which is not perceived.

1. *Preservation of Liens.*

Subdivision S of Section 75—preserves all valid liens. Paragraph 2 of the same provides that prior liens and encumbrances of all kinds shall remain in full force and effect. This is not unlike the provisions of Section 67 (d) of the Bankruptcy Act of July 1, 1898. The recognition of such liens is a pertinent function of bankruptcy law.

Taubel, etc. Co. v. *Fox*, 264 U. S. 426.
Straton v. *New*, 283 U. S. 318.

2. *Vesting of Title to Bankrupt's Property in Trustee.*

Subsection N of Section 75 (the Agricultural Compositions and Extensions Act, of which the Act in question is a part) provides that the filing of the petition shall subject the farmer and his property wherever found to the exclusive jurisdiction of the court with like effect upon the title of the farmer in the officers of the court as if a voluntary petition in bankruptcy had been filed. This vests the title in the trustee. It was so held in the case of *In re Duffy*, 9 Fed. Supp. 166. The Bankruptcy Act of July 1, 1898, Section 70 (a) is the same and was so construed in *Mueller v. Nugent*, 184 U. S. 1.

3. *Provision for Appraisal of the Bankrupt Estate.*

Subsection 1 provides for an appraisal of the debtor's property. It requires that "all the property of the debtor" be appraised "at its then fair and reasonable value, not necessarily the market value at the time of such appraisal." The reason for qualifying the appraisal at the fair and reasonable value by adding "not necessarily the market value at the time of such appraisal" was to include elements of value that might be omitted due to the absence of a market and to the fact that it was thought that the market price was less than the fair and reasonable value, which will be explained further, *infra*, presently.

Section 7 provides for a reappraisal at the request of the lienholder. In such case "the debtor may then pay the appraised price, if acceptable to the lienholder, into the court, otherwise the original appraisal price shall be paid into court." It is clear that this gives the lienholder an option to accept or reject the reappraisal price. With this option he can take advantage of increase in value during the 5 year stay period and cannot lose anything by decrease in value during the period. He is protected against loss in value and given the right to increases in value.

Provisions for appraisal are common in all laws in which there is to be administration upon property. Laws for the administration of estates have them. All bankruptcy laws have them.

The Bankruptcy Act of July 1, 1898, Sec. 70 b, provides for an appraisement of the estate by three disinterested appraisers who shall be appointed by and report to the court. By Section 2 of the Act bankruptcy courts are vested with full jurisdiction at law and in equity in bankruptcy proceedings. This power is ample to protect the rights of all parties. If there is an abuse of power or errors in the proceedings of the referees, trustees, appraisers or other officers of the court, a court of bankruptcy has the power to, and will upon application, correct the same. The power in equity to order and supervise sales has always been recognized.

Van Huffel v. *Harkelrode* 284 U. S. 225.

There is no claim here that the appraisal was not a fair and honest one. If it should appear that appraisers acted unfairly, fraudulently, erroneously or corruptly, the court has the inherent power to set aside the appraisal and order a new appraisal. An illegal appraisal is not an appraisal at all.

20 C. J. 1042.

Garrison v. *City of N. Y.*, 21 Wall. 196.

The act contemplates a fair and honest appraisal. The debates in Congress show that the provisions that the appraisal shall be at "the fair and reasonable value, not necessarily the market value at the time of such appraisal" was at the insistence of those opposed to the bill. The argument was that inasmuch as there was no market for farms, there was no market value, and that the fair and reasonable value, which was not necessarily the market value, was more truly representative of the real value, be-

cause it included an element of value over and above the market price and hence the valuation should not be made at only the market value.

In *Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685, the statute under which certain lands were taken provided for an appraisal and assessment of damages by commissioners, making their findings final, subject to judicial review upon ground of erroneous basis of proceedings of commissioners. This Court held the statute constitutional and not a denial of due process. (p. 695). *Crane* v. *Hahlo*, 258 U. S. 142, is to the same effect. The assessment of damages and appraisal of properties by a commission, board, sheriff's jury or other non-judicial body was common in England prior to the adoption of the Constitution and satisfies all requirements of due process, especially where the matter is subject to judicial review as to the legal basis of proceedings (p. 147).

4. *The Conversion of the Bankrupt's Estate into Cash.*

All bankruptcy laws provide for conversion of the bankrupt's estate into cash and a distribution of the cash among the creditors as it may appear they are entitled. No law provides that the property as such shall be distributed or that a creditor has a right to receive the property as such. Even in cases in which he is permitted to enforce his lien in the state courts, the creditor receives the cash proceeds of the sale and not the property as such. It may be true that he sometimes bids in the property at the sale, but in such cases the bid is for cash and the property applied in payment.

Statements are taken from opinions to substantiate the claim that the creditor is entitled to the bankrupt's property. Language from *U. S.* v. *Fox*, 95 U. S. 670, is claimed to be susceptible of such a construction. We submit that what is meant is that the bankrupt's property is applied

to the payment of debts due to his creditors by administration in bankruptcy by which it is converted into cash and distributed. In all the cases it is apparent that distribution is to be in cash and not in kind. In such cases courts are but exercising the jurisdiction conferred on them "to cause the estates of bankrupts to be collected, reduced to money and distributed" under Bankruptcy Act, 1898, Section 2, (7). This section has been held to authorize the sale of the bankrupt's estate coming into the possession of the trustee. It was so held in the case of *In re Loveland*, 155 Fed. 838, 84 C. C. A. 72, 19 Am. B. R. 18.

In at least three cases this Court has held that the estate shall be reduced to cash and distributed as such. In *Burlingham* v. *Crouse*, 228 U. S. 459, in speaking upon this point, this Court said:

> "It is the twofold purpose of the Bankruptcy Act to convert the estate of the bankrupt into cash and distribute it among creditors and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched. In the light of this policy the act must be construed."

In *William* v. *U. S. F. & G. Co.*, 236 U. S. 549, at p. 554-555, substantially the same language is used and again in *Maynard* v. *Elliott*, 283 U. S. 273, at p. 277.

The law here in question provides for a sale of the bankrupt's property by the trustee. In cases in which the bankrupt consents to the sale, it is made pursuant to paragraph 3, subsection S, of Section 75. In cases in which he does not consent, the payment is made into court by the bankrupt, Par. 7 of same law. In either event, conversion of the bankrupt's property into cash takes place. The fact that the payment is made in the future or in installments does not alter the case. *In re Reiman*, 7 Ben. 455, 11 N. B. R. 21, 20 Fed. Cas. No. 11673, so holds.

This but demonstrates the error in the claim that the creditors are entitled to the bankrupt's property. They are entitled to have the property turned over to the trustee to be administered upon in bankruptcy and to receive a *pro rata* share of the cash proceeds of it. The Frazier-Lemke Amendment makes provision for such payment in the ways, which have been indicated.

5. *Transfer of Lien of Mortgage upon the Property to the Proceeds of the Property.*

The law here in question in effect transfers the petitioner's lien from the property itself to the proceeds of the property converted into cash and compels the creditor to pursue his remedy in the bankruptcy court instead of in the state court.

The power to transfer a lien from property to the cash proceeds of a sale of the property has been authoritatively determined by the decision of this Court in the case of *Van Huffel* v. *Harkelrode*, 284 U. S. 225, 78 A. L. R. 453 and note. This was an action to quiet title to land purchased by plaintiff acquired from the purchaser at a sale made by a bankruptcy court, which made an order that all liens be marshaled; that the property be sold free of all encumbrances and that the rights of all lienholders be transferred to the proceeds of the sale. Defendant is a county treasurer asserting a lien for State taxes and claims that the court was without power to order the sale and never acquired jurisdiction over the State. It was pointed out that there was no statute expressly conferring such power. This Court held that such power is possessed by courts of equity, and that the federal courts had exercised it in equity in many cases and that the courts of bankruptcy possessed jurisdiction in equity for the exercise of this power. It was held

that the bankruptcy courts have express power under Section 64 to determine the amount or legality of any tax. It then said:

> "To transfer the lien from the property to the proceeds of the sale is the exercise of a lesser power; and legislation conferring it is obviously constitutional. Realization upon the lien created by the state law must yield to the requirements of bankruptcy administration."

The judgment was for plaintiff and the rights of the State against the land held to be barred.

There is more reason for sustaining the right to transfer the lien from the property to the proceeds thereof in the instant case, because the procedure under the Frazier-Lemke Amendment requires that precise thing to be done. In *Van Huffel's* case there was no statute expressly authorizing it; and in that case this Court said, "legislation conferring it is obviously constitutional." The law in question is such legislation and is "obviously constitutional."

It has been the rule of the federal courts for many years. Form 44, 172 U. S. 709. It has been exercised in cases like *In re Franklin Brewing Co.*, 249 Fed. 333 (C. C. A. 2d), *In re Harralson*, 179 Fed. 490, 103 C. C. A. 70, 29 L. R. A. (N. S.) 737 and note, and in the numerous cases collected in the note at 78 A. L. R. 453 and the notes therein referred to.

In *First National Bank* v. *Shedd*, 121 U. S. 74, 87, cited in *Van Huffel's* case, *supra*, a decree was upheld, which ordered a certain railway sold, which was subject to two mortgages, over the objections of a minority group holding bonds secured by one mortgage as collateral who contested the priority of one of the mortgages and left the conflicting claims as to priority of liens and the amounts of bonds

issued to be settled by a subsequent decree "dividing the proceeds equitably between the two securities after a sale." In *Mellen* v. *Moline Malleable Iron Works*, 131 U. S. 352, 367, also cited in *Van Huffel's* case, *supra*, this Court held that this power of transferring a lien on property to the proceeds of a sale of the property is a subject over which courts of equity have "general jurisdiction."

Not only may the lien be transferred in equity, under general jurisdiction or when such jurisdiction is conferred by statute; but Congress has the power to confer jurisdiction upon courts of bankruptcies for the enforcement of the lien and exclude all other courts, including the state courts, from exercising any jurisdiction whatsoever in the premises. It was expressly so held in *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426, 430-431. The Frazier-Lemke Amendment confers such jurisdiction and the court below properly exercised it.

6. *Use of devise of Modified Composition*

(a) A Composition, of course, rests upon agreement of the parties. The Frazier-Lemke Amendment in Paragraph 3, Subsection S, of Section 75 provides the terms and conditions to which the lienholder may give or withhold his assent. In an ordinary composition it is true that the parties themselves make and agree upon the terms and conditions. In this case the statute makes them, by specifying payments of certain percentages of the appraised value of the property at certain times. The only matter left to agreement is the acceptance of these statutory terms after the value of property has been determined by the appraisal. It is a modified composition. It is purely voluntary and a matter of assent so far as concerns the lienholder.

Under Section 12 of the Act of 1898 the composition is based upon voluntary assent so far as concerns the majori-

ty of creditors. It is involuntary in every sense so far as it concerns the minority. They do not have the right to refuse to assent even as the lienholder has under the Frazier-Lemke Amendment and yet they are bound,—this by the will of a majority, the will of other creditors.

Wilmot v. *Mudge*, 103 U. S. 217.
Cumberland Glass Co. v. *Dewitt*, 237 U. S. 477.
Nassau Smelting, etc. Works v. *Brightwood*, 265 U. S. 269.

In so far as this matter is concerned the law in question uses an old devise of bankruptcy law to bring debtor and creditor together to save the former's property for him. Under the Act of 1898, Section 70 (f) title to the property revests in the bankrupt upon the confirmation of the composition provided for in Section 12. Under the section of the Frazier-Lemke Act (Sec. 75, Sub. S, Par. 3) he becomes an owner by purchase upon payment of the appraised value. It is the same principle as that of the Act of 1898 with the modifications mentioned.

(b) Paragraph 7, Subsection S, Section 75 provides for the relief granted in the instant case. It provides, so far as here material at this time, that the bankrupt may at any time during 5 years pay into court the appraised value of the farm and be revested with full possession and title. He is permitted to have possession under the control of the court upon terms fixed in the order.

This provision is an alternative in case the lienholder refuses his assent to a voluntary sale. First, it gives the bankrupt a right in the nature of an option to repurchase his property at any time within 5 years by payment into court of the appraisal price. Upon such payment by the bankrupt "the court shall by order turn over full possession and title of said property to the debtor." Secondly, if the bankrupt fails to comply with the provisions of sub-

section 7, "the court may order the trustee to sell the property as provided in this title." It is submitted that this meets all the requirements of distribution and discharge. It makes certain the liquidation of the estate of the bankrupt so that distribution can be made. It provides for a sale in any event for that purpose. This is the limit of the rights of the creditor in bankruptcy. The time, manner and method of distribution are legislative and must be determined by Congress.

It is contended, however, that the bankrupt is not bound to buy during the time he holds possession and that the matter of paying the appraisal price into court is purely optional with him. It is said that the Act in question confers rights and privileges on the bankrupt without imposing a corresponding liability on his part. The matter is purely legislative. In the exercise of admitted power, the legislature may confer such rights and privileges without imposing corresponding liabilities. In the *Minnesota Mortgage Moratorium* case a State statute conferred upon mortgagors a right to redeem their properties from mortgage foreclosure for 2 years, additional to the period to which they were entitled by their mortgages under existing law, without imposing a corresponding obligation or liability on mortgagors to redeem. Whether the mortgagors would redeem was purely optional during the extended period of redemption just as the right of the bankrupt to repurchase under Section 7 is purely optional with him during the stay period. While the Frazier-Lemke Amendment has other objects, it has in this respect the same object as the Minnesota Mortgage Moratorium Law, namely, to give the mortgagor a reasonable period in which to save his property by making required payments.

Home Building & Loan Ass'n. v. *Blaisdell,* 290 U. S. 398, holds that governmental power may be so exerted "to safe-

guard the vital interests of its people" (p. 434-435), when justified by economic interests (p. 437) and "to safeguard the economic structure upon which the good of all depends." (p. 442). These are the very objects, which the Frazier-Lemke Amendment has in view. These objects are accomplished by the State by the exercise of its police power, by Congress by the exercise of its powers in respect to bankruptcies. The *Blaisdell* case proceeded upon the assumption that, conceded the power to act at all, such legislation is constitutional and justified. The question in that case was whether there was any power, which the State could exercise to stay the enforcement of mortgages temporarily and thus accomplish the stated purpose. The police power of the State was relied upon as the source of power. In the instant case the power of Congress to act must be conceded because of its powers with respect to bankruptcies. Both the police power of the State and the bankruptcy power of Congress have the same quality of being general, unlimited, unrestricted and paramount within their respective fields.

Such a stay may be regarded as in aid of making a sale to the bankrupt. Options are commonly used for the purpose of aiding and facilitating sales of property. The delay incident to the stay is no different in its effect than the delay incident to extending credit; yet the latter is a recognized power in bankruptcy administration. In any event, as it has been pointed out, the property is sold. There is authority for holding that the stay in its practical effects is not unlike the credit extended in *Traer* v. *Clews*, 115 U. S. 528. It was so held in the case of *In re Cope*, 8 Fed. Supp. 778.

The petitioner cannot complain. It is the underlying principle of bankruptcy that a debtor may be discharged from his liabilities, after his property has been appropri-

ated by his creditors, without the assent of his creditors. This principle was enforced against minority and non-assenting creditors under the Act of 1898 and prior acts and the discharge, upon confirmation of the composition, was absolute as to all creditors, both assenting and not assenting to the composition. The application of the principle to a lienholder under the provisions of the law here in question is no different than the application of it to minority and non-assenting creditors in cases of composition.

In the case of *In re Reiman*, 7 Ben. 455, 11 N. B. R. 21, 20 Fed. Cas. No. 11673 two creditors with large claims refused to give their assent to a composition agreement to which the required majority had given their assent. They claimed that a composition is not comprehended within the subject of bankruptcy and that the effect of it is to enable a majority of the creditors to determine their rights without their assent. Mr. Justice Blatchford pointed out it is a fundamental principle of bankruptcy that assent of creditors to discharge is not necessary and that it is generally given over their opposition. Therefore, in compositions only the assent of a majority of the creditors is required, because it is assumed that they will act for the best interests of all. The rights and interests of the minority are protected in the proceedings for confirmation of the composition. On review of this decision, 12 Blatch. 562, 13 N. B. R. 128, 20 Fed. Cas. No. 11675, Mr. Justice Hunt, in affirming it, said that the creditors were competent to decide the matter of whether a composition is for their best interest and that their decision "is no more oppressive to the opposing creditors than if the determination had been made by the court."

In the case of *Wilmot* v. *Mudge*, 103 U. S. 217, 220 it was held that all creditors whose claims may be discharged by bankruptcy proceedings are bound by the composition

and the discharge is absolute as to their claims. The principle was reiterated and applied in *Cumberland Glass Mfg. Co.* v. *DeWitt*, 237 U. S. 447, and in *Nassau Smelting, etc. Works* v. *Brightwood*, 265 U. S. 269 it was held that the composition binds creditors with scheduled claims, although they do not prove. It was so held also in the case of *In re Mirkus*, 289 Fed. 732 (C. C. A. 2nd), 31 A. L. R. 435.

Thus it seems that the proceeding for a sale under paragraph 7 is based upon a fundamental principle in bankruptcy that a court of bankruptcy has the power to proceed without the assent of a creditor, or lienholder, and provide for the application of the bankrupt's property to the payment of his debts pursuant to law. This is what the law in question does and dispenses with the petitioner's assent to the proceedings, because its assent is not necessary.

7. The Stay of Proceedings in the State Court for a Period of Five Years.

The staying of proceedings in mortgage foreclosure is an appropriate remedy to protect the rights of the mortgagor under a constitutional statute. *Home Building & Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398.

Congress has the power to exclude the State courts from jurisdiction entirely. It was so held by this Court in *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426, 430. That case involved the jurisdiction of bankruptcy courts to determine summarily the validity of certain liens against the bankrupt's property in the hands of an officer of the State court. It was held that bankruptcy courts do not possess such power for the reason that it has not been conferred by statute. It was held that Congress can confer such jurisdiction, in the following language: "Con-

gress has, of course, the power to confer upon the bankruptcy court jurisdiction to adjudicate the rights of trustees to property adversely claimed. In matters of bankruptcy its powers are paramount."

In this case, Congress is exercising but a part of its power. It simply prohibits any proceedings in the State courts, which will interfere, or tend to interfere, with the exercise by bankruptcy courts of their jurisdiction in the premises. This, it has the power to do. *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426, *supra*. In *Straton* v. *New*, 283 U. S. 318, 321 it was held that property in *custodia legis* of a State court at the time of the filing of the petition does not pass to the trustee, upon the ground that Congress had not conferred such jurisdiction on bankruptcy courts. This Court did say, however, that the jurisdiction of bankruptcy courts is "exclusive within the field defined by law." In short by enlarging the definition to include such a stay in this case, Congress has definitely acted within the scope of its powers.

In cases in which Congress has conferred exclusive jurisdiction on bankruptcy courts, that jurisdiction will be exercised by them to oust state courts. This was done in a case involving the right of the bankruptcy court to possession of property of the bankrupt in the case of *Leidigh Carriage Company* v. *Stengel*, 95 Fed. 637, decided by the Circuit Court of Appeals of the Sixth Circuit. One of the questions was whether or not the United States District Court in Bankruptcy obtained jurisdiction to administer the assets of the Bankrupt, which had been placed in the hands of a receiver appointed by the Probate Court of the State, under an assignment for the benefit of creditors. Mr. Chief Justice Taft, then a judge of the Circuit Court of Appeals of the Sixth Circuit, said:

"If this objection were to be sustained, it would seriously embarrass the enforcement of the Bankruptcy Law, and make it subordinate to the State insolvency and assignment laws, wherever an insolvent debtor who had committed an act of bankruptcy had placed his assets in the hands of the assignee acting by State Law under the direction of the Probate Court. It is generally true that, as between courts of concurrent jurisdiction, the Court which first obtains possession of the res must retain possession of it until the res has been finally disposed of, and anyone else interested in the res must apply to that Court if he desires relief with respect to the property in the possession of that Court. But, as between District Courts sitting in bankruptcy and State Courts for the administration of insolvent estates, there is no concurrent jurisdiction. The Constitution of the United States, by giving to Congress the power to pass uniform bankruptcy laws, gives to the Courts in which Congress shall vest this power paramount jurisdiction in bankruptcy proceedings."

Such a provision too is proper to enable the bankruptcy court to protect and maintain the jurisdiction conferred. Exercising the exclusive jurisdiction conferred by the Act of 1898 over property of the bankrupt which came into possession of the trustee by the filing of the petition, a trustee in bankruptcy appointed by Federal bankruptcy courts in Texas ousted the State courts of Arkansas from an attempt to maintain a mortgage foreclosure suit against the land of the bankrupt in the case of *Isaacs* v. *Hobbs, etc. Co.*, 282 U. S. 734.

These authorities are but illustrative of the power of Congress to confer exclusive jurisdiction in bankruptcy upon bankruptcy courts and of the prevention and stay of proceedings in the State courts as a necessary incident thereof to maintain and protect the jurisdiction conferred on bankruptcy courts. In this respect the law here

in question simply provides for the conferring of such jurisdiction to enable the bankruptcy courts to exercise the powers given to them.

8. *Permitting Bankrupt to Remain in Possession of His Property.*

It is permissible in bankruptcy to permit the bankrupt to remain in possession of the property. Sometimes this is done in connection with administration until it becomes necessary to assert the rights of the trustee. In the case of *In re Reiman, supra,* which was a composition, the bankrupt was permitted to remain in possession of the property throughout the proceedings. It was urged in that case that the retention of possession of the property by the bankrupt was grounds for denying confirmation of the composition. The Court said that the retention of the possession of the property by the bankrupt was not a good ground for refusing to confirm the composition. In the case of *Sparhawk* v. *Yerkes,* 142 U. S. 1, 14, the bankruptcy court declined to accept a right of the bankrupt to a seat on the New York Stock Exchange and permitted the bankrupt to retain possession of the same. Out of earnings received after discharge, he paid various assessments against the seat. An action was brought by plaintiffs, as assigneees of the trustee in bankruptcy, claiming title to the seat on the New York Stock Exchange. The Court held that the bankruptcy court had declined to accept the rights of property in the seat in the New York Stock Exchange and that the defendant was at liberty to pay off the charges against the seat and in effect purchase it the same as any other person might purchase it from the trustee himself. In the case of *In re Swofford Brothers Dry Goods Co.,* 180 Fed. 549, an arrangement was made whereby the assets of the bankrupt company re-

mained in possession of its officers pending negotiations for settlement of claims of the company against the officers and the payment of an agreed price by them for the assets of the company. In *Burlingham* v. *Crouse*, 228 U. S. 459, the bankrupt was permitted to retain possession of insurance policies upon which administration was not had.

In the cases cited the possession was permissive and without express authorization of statute. In the case at bar the statute expressly authorizes the possession "under the control of the court." It is really not the bankrupt's possession, but the court's possession. He acts merely as the agent or trustee of the court and is subject to its orders and directions. It is not a moratorium provision in the popular understanding of that expression. *In re Cope*, 8 Fed. Supp. 778, 783. The reason that parties ordinarily are not appointed receivers or trustees is that they have duties to discharge in which there is a conflict between their interests as individuals and as representatives. But, in a case where that conflict cannot arise, there is no valid reason why the party himself should not be appointed. That has sometimes been done. There is special reason for doing so where the party acts under the control and supervision of the court. 53 C. J. 71-72 (Section 78).

In the case of *Kehm* v. *Mott*, 86 Ill. A. 549 (aff. 187 Ill. 519, 58 N. E. 467), it was held that a trustee may be appointed who has no interest which will conflict with those complaining. In *Warren* v. *Stagner*, 7 Wkly NC (Pa.) 127, it was held that where it clearly appears that the party appointed will be entitled to practically the whole of the estate involved, and his integrity and capacity are unimpeached the appointment of a party as receiver is proper. And it was held in *Bartelt* v. *Smith*, 145 Wis. 31, 129 N. W. 782, that in some cases of partnership, especially those

which are small and the transactions involved comparatively simple, it is proper to appoint one of the parties to act as receiver in the dissolution proceedings.

There is a special reason why a farmer should be permitted to hold possession under the control of the court. The business which he has to transact is comparatively simple and it is an easy matter for the court to exercise control and supervision over him. Then there is the fundamental reason in connection with this law and that is after a farmer is dispossessed he is practically impoverished and destroyed and the purposes of the law will be defeated in such cases. The purposes of the law are promoted and advanced by keeping the farmer in possession, protecting the property and earning what he can to apply on taxes, rent and other charges. It is essential that his mortgage be not foreclosed in the State courts in order to preserve his status. *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398.

9. *Sale of the Bankrupt's Property to the Bankrupt.*

It is sometimes urged in this connection, as it was in the court below, that the provisions of the law in question, permitting a sale of the bankrupt's property to the bankrupt, destroys its essential principles as a bankruptcy law. This is far from the fact. The sale of the bankrupt's property to the bankrupt has been approved in many cases. In the case of *In re Reiman, supra*, the matter is referred to with approval. In the case of *Traer* v. *Clews*, 115 U. S. 528, Clews, the bankrupt, purchased from the trustee in bankruptcy all claims and demands on account of stock which Clews formerly owned in the Cedar Rapids Northwestern Construction Company and brought an action against the defendants to recover unpaid dividends due on said stock. The defense was that Clews had not been

discharged as a bankrupt at the time of the transfer; and secondly that the trustee in bankruptcy had no authority to sell the stock and its dividends to Clews. This Court held that Clews had a right to buy the property from the bankrupt which he formerly owned. At page 541, this Court said:

> "Whether Clews had been discharged at the date of the transfer to him is immaterial. After his adjudication as a bankrupt, and the surrender of his property to be administered in bankruptcy, he was just as much at liberty to purchase, if he had the means, any of the property, so surrendered, as any other person. The policy of the bankrupt act was, after taking from the bankrupt all his property not exempt by law, to discharge him from his debts and liabilities, and enable him to take a fresh start. His subsequent earnings were his own. A bankrupt might often desire, out of the proceeds of his exempted property, or out of his means earned since his bankruptcy, to purchase property which he had surrendered to the assignee. This he might do, and there is nothing in the letter or policy of the bankrupt act which forbids his doing so until after his discharge. For, having complied with the law, as it must be presumed he has, he is, after the lapse of six months, entitled, as a matter of course, to his discharge. His right to purchase property surrendered cannot, therefore, depend on his actual discharge, and, in this respect, he stands upon the same footing as any other person."

Sparhawk v. *Yerkes*, 142 U. S. 1, 14, cited *Traer* v. *Clews* and used the following language:

> "The policy of the bankrupt law was, after taking from the bankrupt all his property not exempt by law, to discharge him from his debts and liabilities and enable him to take a fresh start. Henceforward his earnings were his own, and after his adjudication and

the surrendering of his property to be administered, he was as much at liberty to purchase any of the property so surrendered as any other person. *Traer* v. *Clews*, 115 U. S. 528."

The case of *In re Cope*, 8 Fed. 778, 783, quotes *Traer* v. *Clews, supra*, and says that while the procedure under the Frazier-Lemke Act may be somewhat different than that in the language which we have quoted, fundamentally the question discussed in the quotation and involved in the Frazier-Lemke case are the same.

Upon the same principle an officer of a bankrupt corporation was permitted to purchase its assets and settle his liabilities with the corporation. It was so held in the case of *In re Swofford Brothers Dry Goods Co.*, 180 Fed. 549. This is in harmony with the rule that permits parties, plaintiffs, defendants, or otherwise, to an action, to bid at judicial and execution sales. Of course, trustees, appraisers, court officers and others who are charged with a duty with reference to the sale cannot purchase. Otherwise the right to purchase is without restriction and in some cases is encouraged as tending to promote bidding. At an early day this Court in the case of *Prevost* v. *Gratz*, 6 Wheat. 481, 513, Mr. Justice Story, writing the opinion, held that there was no reason why one of the parties to a suit could not purchase at the sale under the decree; in *Pewabic Mining Company* v. *Mason*, 145 U. S. 349, 361-362, the Special Master made a sale of the property to the compainants without leave of the court to bid at the sale. Mr. Justice Brewer held that leave was not necessary. He said that the English practice in this respect does not obtain in this country and that a sale made by a Special Master under the directions of a Court of Chancery is not a sale made by either of the parties to a litigation or under his direction. The Master is a representative of the court, as a marshal or sheriff is in an action at law. He is not under the con-

trol of either party; he is not the agent of either to make the sale. He concluded by saying: "At such public judicial sale, either party as a rule may bid." This is the rule generally in cases of sales upon execution. 23 C. J. 645 (Section 606), notes 80 and 81; *In re Morris*, 17 Fed. Cas. No. 9825, Crabbe, 70; *Kilgo* v. *Castleberry*, 38 Ga. 512, 95 Am. Dec. 407; *Town of Corinth* v. *Locke*, 62 Vt. 411, 20 Atl. 809, 11 L. R. A. 207, all sustain this rule. In *Kilgo* v. *Castleberry*, the property was bid in by one of several defendants. In answer to the claim that a party is not competent to bid at an execution sale the court after holding that a party is competent said, "Public policy would rather promote than forbid bidding."

This rule also is applied in probate sales where all parties except the representative and other officers of the court are permitted to bid. 24 C. J. 632 (Sec. 1585).

There is nothing new or strange in the provisions of the law in question authorizing a sale of the property to the bankrupt himself. It has heretofore had the express approval of this Court, even without being expressly authorized by statute. It is a right which he has and he should be encouraged in the exercise of it so that he can rehabilitate himself. It is a right that is universally recognized in parties to suits and it should not be denied to a bankrupt. The law in question avails itself of the legal principles involved in situations of this kind in accomplishment of the purposes which it has in view.

10. *Extension of Credit to the Bankrupt.*

It is commonly said that the law in question provides for a moratorium. In the case of the voluntary proceedings under this law the arrangement is one for an extension of credit. In the case of the proceedings under Section 7 the farmer or bankrupt is given 5 years within which to raise

the appraised price of the farm to pay into court to regain full possession and title. This is the equivalent of an extension of credit. This, too, has been commonly resorted to in bankruptcy cases. In the case of *In re Reiman, supra,* Mr. Justice Blatchford calls attention to the rule under the English statutes providing for the extension of credit in composition cases. In the case of *In re Reiman, supra,* credit was extended even though the statute did not authorize it and the composition was confirmed upon the grounds that a composition admits the idea of a payment of money by installments at future dates and the taking, in addition, of security that such payments shall be made. A composition for 30%, of which 10% was paid in cash and 20% in endorsed notes, was approved in the case of *In re Mirkus,* 289 Fed. 732 (C. C. A. 2d), 31 A. L. R. 435.

In the case of *Traer* v. *Clews,* 115 U. S. 528, *supra,* the point was also urged that the sale in question by the trustee in bankruptcy to Clews was invalid because it was not for cash only, but was partly for cash and balance on credit. This Court held that the matter of the terms of the sale were in the discretion of the assignee in bankruptcy, who was authorized under the statute to sell all unencumbered property which came into his hands "on such terms as he desires most for the interest of the creditors." The sale was held to be valid. The syllabus to this part of the opinion says that a trustee in bankruptcy may sell the unencumbered property of the estate on credit, when he thinks it most for the interest of the creditors. In the case of *In re Swofford Brothers Dry Goods Co.,* 180 Fed. 510, the sale in question was part cash and the balance secured by the assets purchased. This was not a composition, but was done under the direction of the bankruptcy court. It was a credit transaction.

Sales in which credit is extended in part or in whole, are often made under mortgage foreclosure. 42 C. J. 202;

Jones, Mortgages, Sec. 1615. In *Lowndes* v. *Chisolm*, 2 McCord's Ch., 455, 16 Am. Dec. 667, it was held that a sale upon mortgage foreclosure on reasonable credit is permissible. The court went on to say that the practice of selling on credit seems to be too well established to admit of any doubt and that both defendants and complainants may be considered as contracting with reference to this power of the court—a power which it is not pretended the court can exercise to an arbitrary extent any more than any other discretionary power.

In *Prudential Ins. Co. of America* v. *Lemmons*, 159 S. C. 121, 155 S. E. 591, it was held that the power to order a sale upon terms, partly cash and partly on credit to be secured, is in the sound discretion of the court and will always be exercised upon a showing made.

Probate sales are very often made upon credit. 24 C. J. 632 (Section 1585). In the case of *Reynolds* v. *Wilson*, 15 Ill. 394, 60 Am. Dec. 753, it was held that the credit may be for more than 12 months in the sound discretion of the court.

President Hoover, in his message of February 29, 1932, had in mind the extension of credit to debtors when he recommended that the Bankruptcy Law be provided so as to provide for "composing or extending the maturity of their (debtor's) debts, of amortizing the payment of their debts out of future earnings, of procuring the liquidation of their property under voluntary assignment to a trustee; or, in the case of corporations, for the purpose of reorganization." The Judicial Conference, in whose behalf the Chief Justice issued the statement from which we have quoted *supra*, had in mind the thought of liquidation and composition and expressly stated that to this end it was necessary "to obtain extensions of time for the bankrupt to pay." It seems to us that the recommendations of the

President must be entitled to great weight, because he had been advised in the premises before making his recommendation, and it seems to us that the statement of the Judicial Conference is entitled to great weight because of the character and ability of the men composing the Conference, and the certainty that any statement coming from it has had due consideration. Undoubtedly the recommendations of the President and of the Judicial Conference were made after careful study of the authorities, which fully sustain the validity of the law in question in the respects which we urge here.

From the foregoing authorities it is plain that, in sales made in judicial proceedings of different kinds, credit is often extended to a purchaser. While it is unusual, nevertheless, it is a power that is well recognized and frequently exercised. This Court has given its sanction to it in bankruptcy proceedings and has held that trustees may sell to the bankrupt after adjudication. This was done in the absence of express statute. There is no sound reason why credit should not be extended in the exercise of a sound discretion to promote and facilitate sales of property. There is special reason why credit should be allowed under the Frazier-Lemke Amendment. Prices of land are down. There is no market for land. Values are being sacrificed. Credit is a solution in part at least of this problem and enables the trustee or the court to sell to the bankrupt upon such terms that there is some possibility of his making the payments and saving his property. This is the object which the law has in view and it is proper that it should use the device of credit for the attainment of this purpose.

11. *The Provision for Revesting Full Possession and Title in the Bankrupt Upon Making His Payments in Full.*

The provision for revesting full possession and title in the farmer bankrupt after he has made his payments in

full under the Frazier-Lemke Amendment is not a new idea in bankruptcy law. It is used in connection with compositions under Sec. 12 of the Act of 1898. Sec. 70 (f) of the same Act provides that upon confirmation of the composition the title to the bankrupt's property shall revest in him.

Summary of Point I.

The Frazier-Lemke Amendment simply applies well established principles and procedures of bankruptcy law to the solution of the pressing and urgent problems of the farmer debtor. It is the application of the principles, not the principles themselves, which appears novel. In themselves they are old and the application of them seems to be new. Congress in its choice of means to execute the powers conferred on it in respect to the subject of bankruptcies had the right to select these principles and procedures to accomplish the great purpose which it had in view.

Point II.

Section 75 of the Bankruptcy Act of July 1, 1898, as amended by the Act of June 28, 1934, does not deprive creditors of their property without due process of law, and, therefore, is not in contravention of the Fifth Amendment to the Constitution of the United States.

The claim in this respect is that the creditors are entitled to the bankrupt's property and are deprived of that right by staying the proceedings in the State court by the creditor to foreclose his lien and by the sale of the property to the bankrupt. It is further claimed that the law deprives creditors of speedy and ratable distribution of the bankrupt's estate. We have shown that the matters complained of have been done in bankruptcy and equity for

many years. It has been shown that these matters are part of bankruptcy law, and that the law here in question is for that reason a law on the subject of bankruptcies. If so, then the objection stated raises the question (1) whether the 5th Amendment limits the granted power of Congress on the subject of bankruptcies, and (2) if this first question is answered in the affirmative, in what respects, if any, is the power of Congress with respect to the subject of bankruptcies limited.

A. The power of Congress to legislate on the subject of bankruptcy is not limited by the Constitution, except with respect to the requirement of uniformity.

The language of the Constitution is "to establish • • • uniform laws on the subject of bankruptcies throughout the United States." The idea was to have a uniform, national system of bankruptcy. In *Hanover National Bank* v. *Moyses,* 186 U. S. 181, 188, it was claimed that the provisions in the Act of 1898 relative to exemptions as allowed by State laws violated the requirements of uniformity. In holding against the contention this Court said that the uniformity required "is geographical and not personal."

The requirement of uniformity in the levy of excise taxes is merely a geographical one, not intrinsic.

Billings v. *U. S.,* 232 U. S. 261, 282.

The courts do not have the power and they will not add any limitations on the power of Congress to legislate on the subject of bankruptcies to that of uniformity therein contained.

Flint v. *Stone Tracy Co.,* 220 U. S. 154, 167-168.

The case of *Everard's Breweries* v. *Day,* 265 U. S. 545, involved the constitutionality of the supplemental prohibition act, which contained a provision against physicians pre-

scribing intoxicating malt liquors for medicinal purposes. In this respect it was claimed that the act violated the Eighteenth Amendment and invaded the powers of the States, reserved under the Tenth Amendment. This Court held that the choice of means and the extent of the exercise of a granted power are in the discretion of Congress, and that the courts will refuse to pass judgment on the wisdom or policy of a law. Neither will the Court inquire into the necessity for the law. At page 559 this language, to which nothing can be added, is used:

> "It is likewise well settled that where the means adopted by Congress are not prohibited and are calculated to effect the object intrusted to it, this Court may not inquire into the degree of their necessity; as this would be to pass the line which circumscribes the judicial department and to tread upon legislative ground. *McCulloch v. Maryland, supra,* p. 423; *Legal Tender Case, supra,* p. 450; *Fong Yue Ting* v. *United States, supra,* p. 713. Nor may it enquire as to the wisdom of the legislation. *Legal Tender Case, supra,* p. 450; *McCray* v. *United States,* 195 U. S. 27, 54; *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146, 141. What it may consider is whether that which has been done by Congress has gone beyond the constitutional limits upon its legislative discretion. *Ex Parte Curtis, supra,* p. 373."

The Frazier-Lemke Amendment is uniform. It has not been pointed out in what respects it does not possess uniformity. It operates throughout the United States with uniformity. The fact that it applies to farmers does not deprive the law of its uniformity, because there is a reasonable basis for the classification adopted and the test of uniformity is not personal, but geographical. The opinion of the Circuit Court of Appeals, below, p. 6, deals adequately with this contention. The decision in the case of *In re Leope,* 8 Fed. Supp. 778, 780, sustains these views. It

operates with the same degree of uniformity that the Act of 1898 does and is, therefore, clearly constitutional within that requirement as to uniformity.

B. The Fifth Amendment to the Constitution of the United States does not take away any power granted to Congress with respect to the subject of bankruptcies.

The Fifth Amendment does not operate to take away any power granted to Congress by the Constitution. It may be conceded that it does in some respect limit the manner, in which the power may be exercised, but it does not cut down, take away or vitiate the power itself. Therefore, the inquiry narrows itself to the question, Is the law here in question a bankruptcy law; a law within the granted power of Congress with respect to the subject of bankruptcies? If this question is answered in the affirmative, the law must be held to be constitutional.

In the case of *McCray* v. *U. S.*, 195 U. S. 27, it was claimed that a law passed by Congress imposing a heavy and oppressive tax on oleomargarine was unconstitutional in that it violated the due process clause of the Fifth Amendment by imposing such onerous burdens on the business of dealings in oleomargarine as in effect to destroy it. This Court held that if the law was a tax law and thus within the power of Congress, it was constitutional and that the Fifth Amendment does not operate to take away any granted power of Congress. At page 61, Mr. Chief Justice White, then a justice, said, "Whilst undoubtedly both the Fifth and Tenth Amendments qualify, insofar as they are applicable, all the provisions of the Constitution, nothing in those amendments operates to take away the grant of power to tax conferred by the Constitution upon Congress," and again at p. 63, speaking of the due process clause, he said, "That provision * * * does not withdraw or expressly limit the grant of power to tax conferred upon Congress by

the Constitution." The law was held to be constitutional.

In *Billings* v. *U. S.*, 232 U. S. 261, it was held that the tax imposed by the Tariff Act of August 1909 was constitutional as against the objection that the tax constituted a taking of property without due process of law. In answering the claim that the Constitution required intrinsic, and not geographical, uniformity in the levying of excise taxes and that the Fifth Amendment limited in that respect the power of Congress to tax, Mr. Chief Justice White said:

> "It is also settled beyond dispute that the Constitution is not self-destructive. In other words, that the powers which it confers on the one hand it does not immediately take away on the other; that is to say, that the authority to tax which is given in express terms is not limited or restricted by the subsequent provisions of the Constitution or the amendments thereto, especially by the due process clause of the Fifth Amendment."

It was held that the law in question was a tax law authorized by the Constitution and that the Fifth Amendment does not operate to take away the power to pass the law, which the Constitution expressly grants power to Congress to pass.

In *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, the corporation tax of 1909 was sustained against the contention of violating the due process clause of the Fifth Amendment, in that the classification adopted as a basis for the taxes thereby imposed is arbitrary, unreasonable and baseless. This Court held that if Congress had the power to enact the law, it was not in violation of the Fifth Amendment. Then after holding that Congress had the power to pass such an excise tax law, it disposed of the due process contention in one sentence, "What we have said as to the power of Congress to lay this excise tax disposes of the contention that the act is void as lacking in due process of law."

In the instant case we have clearly demonstrated in Point I that the law here in question is a law upon the subject of bankruptcies. If the Court finds that it is such a law, that disposes of all questions of due process of law and any others that might arise under the Fifth Amendment.

Substantially the same language was used in *Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1, 24-25, which was an action to restrain the corporation from voluntarily complying with the income tax provisions of the Tariff Act of 1913, in which the Court said:

> "So far as the due process clause of the Fifth Amendment is relied upon, it suffices to say that there is no basis for such reliance since it is equally well settled that such clause is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power and taking the same power away on the other by the limitations of the due process clause. *Treat* v. *White*, 181 U. S. 264; *Patton* v. *Brady*, 184 U. S. 608; *McCray* v. *United States*, 195 U. S. 27, 61; *Flint* v. *Stone Tracy Co., supra; Billings* v. *United States*, 232 U. S. 261, 282. And no change in the situation here would arise if it be conceded, as we think it must be, that this doctrine would have no application in a case where, although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property, that is, a taking of the same in violation of the Fifth Amendment, or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion."

In *Magnano Co.* v. *Hamilton*, 292 U. S. 40, was involved the constitutionality of a statute of the State of Washington imposing a tax of 15¢ per pound on all butter substitutes,

including oleomargine, sold within the State. It was claimed in that case that the tax was so heavy and onerous as to destroy the oleomargarine industry. The case involves the constitutionality of the mentioned statute under due process clause of the Fourteenth Amendment. This Court points out that the rules applicable in this respect are the same under both the Fourteenth Amendment and the Fifth Amendment. The cases are fully reviewed in this opinion and the Court points out that it has been only in rare and special instances that the due process clause contained in the Fifth Amendment has been a limitation upon the taxing power conferred upon Congress by the Constitution. It held that the due process clause is applicable to a taxing statute such as the one assailed in the cited case "only if the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property," citing numerous cases. It was pointed out that the Court will not enquire into the collateral purposes or motives of Congress in levying a tax of a kind within the reach of its lawful power. It held that a tax may not be stricken down simply "because its enforcement may or will result in restricting or even destroying particular occupations or businesses," citing many cases, "unless, indeed, as already indicated, its necessary interpretation and effect be such as plainly to demonstrate that the form of taxation was adopted as a mere disguise, under which there was exercised, in reality, another and different power denied by the Federal Constitution to the State. The present case does not furnish such a demonstration." The Court reviewed numerous cases, including *Veazie Bank* v. *Fenno*, 8 Wall. 533, the *McCray* case, 195 U. S. 27, the *Child Labor* case, 259 U. S. 20 and numerous other cases. In conclusion the Court said, among other

things, that if it appears that a statute is plainly a taxing statute or that a statute is clearly an exercise of a granted power it will not be held to be unconstitutional even though the law may be oppressive or unwise. The Court said: "The statute here under review is in form plainly a taxing act, with nothing in its terms to suggest that it was intended to be anything else. It must be construed, and the intent and meaning of the legislature ascertained, from the language of the act, and the words used therein are to be given their ordinary meaning unless the context shows that they are differently used," and the concluding paragraph is: "From the beginning of our Government, the courts have sustained taxes although imposed with the collateral intent of effecting ulterior ends which, considered apart, were beyond the constitutional power of the lawmakers to realize by legislation directly addressed to their accomplishment. Those decisions, as the foregoing discussion discloses, rule the present case." In the instant case it is evident that the Frazier-Lemke Amendment is a pure bankruptcy law and the power of Congress to exercise this granted power is not to be cut down and the substance of it taken away by other provisions in the Constitution, including the Fifth Amendment. The rule in the *Magnano* case, and the other cases which we have cited, govern this case; and, if the Court finds that the Frazier-Lemke Amendment is a bankruptcy law, that settles also the question of whether or not it offends against the due process clause of the Fifth Amendment. We believe that the Court must find that it is a pure bankruptcy law and as such is constitutional.

In the *Child Labor* case, 259 U. S. 20, the rule that governs in this case was clearly recognized. In *United States* v. *Doremus*, 249 U. S. 86, the constitutionality of Section 2 of the Narcotic Drug Act of December 17, 1914, was involved and it was claimed that the law was a police regulation because it regulated the sale of narcotics to the extent

of requiring that prescriptions for narcotics by physicians be upon blanks provided by the Commissioner of Internal Revenue and also because the law provided for a most minute police regulation of the entire traffic. The Court in that case pointed out that if a law was really a tax law and the provisions in it bore some reasonable relation to the exercise of the taxing authority conferred by the Constitution, it cannot be invalidated because of the supposed motives which induced it or because, in the exercise of that power, what might otherwise be regarded as police regulation was adopted by Congress as an effective means for carrying into effect the power granted.

It was for the reasons just stated that this Court held in the case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181, that the Act of 1898 does not violate the Fifth Amendment. It is true that the question in that case in this respect involved a question of giving notice of proceedings. The notice was held to be within legislative power of Congress upon the subject. In speaking of the power of Congress, this Court said:

> "Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law, and we cannot find anything in this act on that subject which would justify us in overthrowing its action."

The language just quoted contains the implied limitation that a bankruptcy law must not be "so grossly unreasonable as to be incompatible with fundamental law." The meaning of this expression is not defined. A somewhat similar situation was referred to in *McCray* v. *U. S.*, 196 U. S. 27, 62-63, in which the Court for the purpose of argument assumed that it might be the duty of the judiciary to hold acts void upon the assumption that the Constitution by necessary implication forbade them as an exertion of

governmental power by Congress, if perverted by so great an abuse of the power as to destroy fundamental rights which no free government can consistently violate. The Court in that case said, however, that it was not necessary to pass on this question inasmuch as the law there involved was a taxing law which was within one of the granted powers of Congress and hence constitutional. In this case the law questioned is a bankruptcy law and hence within the power of Congress. Furthermore, the Frazier-Lemke Amendment is a reasonable exercise of the powers of Congress with respect to the subject of bankruptcies and is a remedy to deal with a grave and serious problem in the light of known facts which might well lead Congress to the selection of the law in question as an appropriate remedy for dealing with that problem.

It seems to us that the language referred to requires that a constitutional power be exercised in such a way as to constitute an exercise of the power granted. This the Frazier-Lemke Amendment does. If the law does not constitute an exercise of granted power, it is unauthorized by the Constitution and hence invalid. In *Fox* v. *Standard Oil Company of New Jersey*, decided by this Court on January 14, 1935, in speaking upon this question the Court said: "That a tax act might be so arbitrary as not to be an exercise of the taxing power at all, the form of a tax being but a cloak for something else." This we think is the true distinction. It is the distinction upon which many cases invoking the Fifth Amendment may be distinguished. In *Ochoa* v. *Hernandez*, 230 U. S. 139 the Court properly held that a taking of property under a military order made retroactive for which there was no military necessity was not an exercise of the war powers and consequently the taking was one without due process of law. In *Missouri Pac. Ry. Co.* v. *Neb.* 164 U. S. 203 the validity of an order of a State board permitting a party to build an elevator

on the railway company's right-of-way was involved. It was held that such an order requiring a railway company to permit a private party to use its right-of-way without compensation was a violation of the Fourteenth Amendment. It is not in point here. In *Loan Association* v. *Topeka*, 20 Wall. 655, a statute which provided for the issuance of bonds by a town to aid a private manufacturing enterprise is void because it is not a legitimate use of the taxing power. Taxes can be levied only for public purposes. When taxes are levied to be made the subject of bounty to private individuals the power is used to take one man's property and give it to another. Under such circumstances it is not an exercise of taxing power at all even though the law may assume that form. None of these cases are really in point at all. They have no bearing upon the question which is involved here.

C. There is no taking of petitioner's property within the meaning of the due process clause of the Fifth Amendment.

In so far as the petitioner claims that the obligations of its contract with the bankrupt are impaired, the contention is without merit for the reason that the power of Congress to legislate upon the subject of bankruptcies includes by necessity the power to impair the obligation of contracts. This was expressly held in the case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181. At page 188 this Court said:

> "Hence the importance of the distinction between the power of Congress and the power of the States. The subject of 'bankruptcies' includes the power to discharge the debtor from his contracts and legal liabilities, as well as to distribute his property. The grant to Congress involves the power to impair the obligation of contracts, and this the States were forbidden to do."

The petitioner has no rights in the bankrupt's property as such. In bankruptcy he has a right only to participate in the distribution of the bankrupt's estate after it has been converted into cash. Congress may legislate upon this matter and determine the manner and mode and time of the liquidation. We have pointed this out at considerable length in Point I of this brief. In support of this contention we cited such cases as *Burlingham* v. *Crouse*, 228 U. S. 459; *Williams* v. *U. S. F. & G. Company*, 236 U. S. 549; *Maynard* v. *Elliott*, 283 U. S. 273; and a large number of other cases. These authorities all hold that the bankruptcy proceedings terminate the rights of the parties as between themselves and places the whole matter in administration in bankruptcy. In the bankruptcy proceedings the rights of the parties are determined and adjusted and provision made for the distribution of the proceeds of the bankrupt's estate in payment of the claims of the parties as determined and adjusted by the bankruptcy court. We think that it is not necessary to repeat here what we have said in Point I upon this proposition. In passing we call attention to the fact that the petitioner's claim is in this respect that the denial to it of the right to foreclose its mortgage on the bankrupt's property in the State courts is a denial of due process. In the numerous cases which we have cited on this proposition in Point I, it is held that the matter of enforcing liens is a matter of bankruptcy and that Congress has the power to confer jurisdiction on courts of bankruptcy to deal with the matter. In the case of *Van Huffel* v. *Harkelrode*, 284 U. S. 225, *supra*, it was held that courts of bankruptcy have the power as courts of equity to transfer a lien on property from the property to the cash proceeds derived from the sale of it. It was held that such courts have this power as courts of equity without it being expressly conferred by statute and that bankruptcy courts may order property sold free from liens. In the *Van Huffel*

case this Court said that a statute conferring such jurisdiction would be "obviously constitutional." In *Taubel, etc., Co.* v. *Fox*, 264 U. S., cited *supra*, it was expressly held by this Court that the entire matter of jurisdiction over liens and conflicting claims may be placed under the jurisdiction of bankruptcy courts by act of Congress. In short the entire matter of the determination and the adjustment of the rights of creditors against the bankrupt and his estate and the remedies for such rights are within the power of Congress to legislate on the subject of bankruptcies. When this power is conferred upon bankruptcy courts it may be exercised in the manner and to the extent conferred.

The Frazier-Lemke Amendment is an exercise of the power of Congress in this respect. By this law Congress has conferred on courts of bankruptcy the power to deal with mortgages and other liens upon property of the bankrupt and such laws are within the constitutional power of Congress. There is no taking without due process in such a case. The "taking", if such it may be called, is one embraced within the power of Congress to legislate on the subject of bankruptcy. It is inherent in and a part of bankruptcy and this power cannot be taken away from Congress without destroying and vitiating the power itself.

The power of Congress to legislate with respect to the subject of bankruptcies has always been construed to include the power to deal with both secured and unsecured claims and to transfer liens from property to the proceeds of property and to do whatever is requisite in order to effectively administer the estate of the bankrupt. The numerous decisions which we have cited under Point I extend over almost the entire history of bankruptcy law in the United States and sustain this construction. It is a construction that is self evident from the power itself. It has never been thought that the power of Congress in this respect should be construed to mean that administra-

tion in bankruptcy deprives a creditor or lienholder of his property without due process of law. As was said by this Court in *Maynard* v. *Elliott*, 283 U. S. 273, 277, "Only compelling language • • • would warrant the rejection of a construction so long and so generally accepted, especially where overturning the established practice would have such far reaching consequences as in the present instance."

In passing, although we deem it unnecessary to advert to the fact, we think that this disposes of petitioner's complaint of loss of interest during the option period and the insufficiency of the rental to pay taxes, insurance and repairs. There might be some basis for petitioner's claim in ordinary proceedings, but not in bankruptcy. Furthermore, the rental fixed by the court is the compensatory equivalent for any alleged deprivation of the use of property in the eyes of the law. This has been expressly held in the so-called rent cases, *Block* v. *Hirsch*, 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman; Levy Leasing Co., Inc.*, v. *Siegel*, 258 U. S. 242, and in the *Minnesota Mortgage Moratorium* case, *Home Building & Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398, and also in the case of *Peo.* v. *La Fetra*, 230 N. Y. 429, 130 N. E. 601.

Furthermore, while it may not be necessary to go into the matter, there is no denial of due process in any manner. The creditor is given the full appraised value of the farm. Thereby nothing is taken from him. The proceedings in this respect constitute due process in ordinary proceedings at law and in equity. There is no deprivation in a legal sense. This is true, because the creditor is given the equivalent in value out of the proceeds under the rule of the case of *Van Huffel* v. *Harkelrode*, 284 U. S. 225, *supra*, and because the proceedings for appraisal of the property, discussed *supra* under "3. Provision for appraisal of the Bankrupt Estate", insure to the creditor full value and are due process. *Garrison* v. *City of New York*, 21 Wall. 196; *Long*

Island Water Supply Co. v. *Brooklyn*, 166 U. S. 685, and *Crane* v. *Hahlo*, 258 U. S. 142, sustain this view. It is not necessary, however, to go to this length to sustain the Frazier-Lemke Amendment. We refer to this as matter to be considered in connection with the claim of petitioner of denial of due process. The proceedings under the Frazier-Lemke Amendment are constitutional both in bankruptcy under the granted powers of Congress with respect to the subject of bankruptcies and in ordinary legal proceedings.

Virtually all the questions raised in this appeal by appellants have just recently been decided by the U. S. Circuit Court of Appeals of the Fourth Circuit, sitting at Richmond, Virginia, in the case of *Thomas Campbell, a Bondholder*, v. *Alleghany Corporation*, No. 3831. In that case, the constitutionality of Section 77b of the Bankruptcy Act (Act of June 7, 1934, Chapter 424, 48 Stat. 912, 11 U. S. C. A. 204) was challenged on the same grounds that the constitutionality of Section 75, and subsection (s) of Section 75, are challenged in the case now here before this Court. In that case, the Hon. Judge Parker states in his opinion:

> "We entertain no doubt as to the constitutionality of the statute. It is an exercise of the power conferred on Congress by Art. 1, Sec. 8, Clause 4 of the Constitution, 'to establish * * * uniform laws on the subject of bankruptcies throughout the United States', adapted to the conditions presented by modern industrial organization. Prior to the passage of the act, neither proceedings under the old bankruptcy laws nor receiverships in equity furnished adequate relief for distressed corporate debtors, their creditors and stockholders, under modern conditions. * * * Proceedings under the old bankruptcy laws were inadequate because no machinery existed to scale down secured debts without a sale of the security; and a sale almost necessarily resulted in a sacrifice of the property at an inadequate price because of the lack of persons in a position to bid for it. If forced to sale, it was fre-

quently, if not generally, bought in by a committee of bondholders at the inadequate prices which forced sales notoriously yield, with the result that non-assenting bondholders received little and stockholders nothing at all. • • • Only by the further exercise of the bankruptcy power of Congress could adequate relief be afforded these distressed corporate debtors and their creditors; and the act in question was passed for the purpose of affording this relief."

• • • • • • •

"The grant of power to Congress to establish uniform laws on the subject of bankruptcies is not limited to the forms in which that power has heretofore been exercised by Congress or by the laws relating to bankruptcy which had been enacted in England or in the several American colonies prior to the adoption of the Constitution. See article by Prof. Gerdes in XII New York University Law Quarterly Review 198, and article by Jacob J. Kaplan, vol. XXI American Bar Association Journal p. 47, for a history of these acts. All phases of the relationship between a debtor financially embarrassed and his creditors is brought under the control of Congress by the constitutional grant of power; and the fact that a particular mode has hitherto been employed in dealing with this relationship is not to be taken as a measure of the power over it. *Hanover Nat. Bank* v. *Moyses*, 186 U. S. 181; *Sturges* v. *Crowninshield*, 4 Wheat. 122; *In re Landquist* (C. C. A. 7th) 70 Fed. (2d) 929; *In re Klein*, Fed. Cas. No. 7865 reported as note to *Nelson* v. *Carland*, 1 How. 265, 277; *In re Reiman*, 7 Ben. 455, Fed. Cas. No. 11,673; *Kunzler* v. *Kohaus*, 5 Hill 317. As said in Story on the Constitution, Sec. 1113, quoted in *In re Reiman, supra:* 'Perhaps as satisfactory a description of a bankrupt law as can be framed is that it is a law for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts. And a law on the subject of bankruptcies, in the sense of the Constitution, is a law making pro-

vision for cases of persons failing to pay their debts.'

And, as pointed out by the Circuit Court of Appeals of the Seventh Circuit in *In re Landquist, supra,* inability to pay (except under the act of 1867) has always been recognized in this country as entitling a debtor to the benefit of the bankruptcy acts 'whether that inability were caused by a lack of assets or a lack of liquidity of assets.' Certainly, the act here in question is for the relief of corporate debtors who are unable to pay and their creditors, and falls well within the purpose of the constitutional grant of power."

* * * * * * *

"Little need be said as to the question which arises under the Fifth Amendment. There is no question, of course, but that the exercise of the bankruptcy power by Congress, as is the case with other delegated powers, is subject to the requirement of due process contained in that amendment. *Monongahela Nav. Co.* v. *U. S.*, 148 U. S. 312, 336; *Hanover Nat. Bank* v. *Moyses, supra,* 186 U. S. 181, 192. But as any exercise of the bankruptcy power impairs the obligation of contracts, such impairment is not to be taken as in itself a denial of due process. For the provisions of the act to violate the amendment, they must be so grossly arbitrary and unreasonable as to be 'incompatible with fundamental law.' *Hanover Nat. Bank* v. *Moyses, supra.* We do not think that the requirement that secured creditors scale their debts in accordance with a plan which two-thirds of them are willing to accept and which has been approved by the court as reasonable and fair, and accept in lieu of payment in money such securities as are specified in the plan, can be said to be such an arbitrary and unreasonable exercise of the bankruptcy power as to amount to a denial of due process.

"The fact that secured debts are affected by the act does not, of course, raise any grave constitutional question, and can be dismissed with brief comment. 'A secured debt or lien is, so far as the Constitution

of the United States is concerned, a no more sacred kind of property than an unsecured debt, * * * and the Constitution expressly permits and grants to Congress the power to affect such property, whether it be an unsecured debt or whether it be a lien, by laws relating to the subject of bankruptcies.' *In re Burgh*, 7 Fed. Supp. 184, 185.

"As a matter of fact, no property in any real sense is taken from the dissenting creditor when he is compelled under 77b to scale his claim and accept securities in lieu thereof. The securities held by him have already shrunk in value before the proceeding under the act is instituted; and all that is required of him is that he face reality and accept his pro rata interest in the debtor's property in a form which will not jeopardize the rights of other creditors similarly situated. * * * and, when the situation is viewed realistically, it is readily seen that he is not required to surrender any part of the value either of his securities or of the property available for the payment of his claim."

* * * * * * *

"Doubts as to the validity of Section 77b are based very largely upon the fact that the relief which it provides for embarrassed corporations, their creditors and stockholders, has not heretofore existed under the laws of this country, and for that reason seems novel and questionable. It must be remembered, however, that the power granted Congress over the subject of bankruptcies is plenary, and that in its exercise Congress is not limited by what has been attempted in the past but may shape its remedies in a way to meet adequately the problems of the present. Like other constitutional grants of power, that giving Congress power over bankruptcies is to be interpreted, not in the light of the conditions with which the framers of the Constitution were familiar, but of what is required under modern conditions to deal adequately with the relationship existing between embarrassed debtors and their creditors. As said by Chief Justice Hughes in

Home Building & Loan Association v. *Blaisdell*, 290 U. S. 398, 442, 'If by the statement that what the Constitution meant at the time of its adoption it means today, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning—"We must never forget that it is a constitution we are expounding" (*McCulloch* v. *Maryland*, 4 Wheat. 316, 407)—"a constitution intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." Id., p. 415. When we are dealing with the words of the Constitution, said this Court in *Missouri* v. *Holland*, 252 U. S. 416, 433, "we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. • • • The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago".'"

CONCLUSION.

The Frazier-Lemke Amendment is an exercise of the power of Congress to legislate upon the subject of bankruptcies, which was enacted to deal with the problem of the indebtedness of the American farmer. This and other laws were passed to deal with the general debt problem during the present emergency. It is a law that is limited by its terms and expires on March 3, 1938. It is based upon the conditions actually existing and is designed to afford a remedy for them. In passing this law Congress had the right and it was its duty to so frame it as to promote the general welfare. Congress is the exclusive judge of the means to be employed to achieve the purposes which it had in view. That the protection of the basic

economic interest of America is a legitimate end to be attained by legislation is settled by the decisions of this Court. An interpretation should not be placed on the Constitution which will restrict the scope of the power of Congress with respect to legislation on bankruptcy so that it will be limited by prior Congressional legislation on the subject since the adoption of the Constitution. The Constitution is a declaration of principles and the powers conferred upon Congress, including that of bankruptcy. The power to legislate on the subject of bankruptcy is a comprehensive one and includes the power to enact the Frazier-Lemke Amendment. The history, the practical construction and the decisions upon the subject all confirm the interpretation that the subject of bankruptcy is comprehensive enough in its scope to include a law containing the provisions of the Frazier-Lemke Amendment. The interpretation which would adopt prior congressional legislation as a criterion would strangle the constitutional power of Congress. It should always be borne in mind in construing a Constitution the necessity of guarding against a narrow construction of it. This was very aptly stated by Mr. Chief Justice Hughes in *Home Building & Loan Ass'n. v. Blaisdell*, 290 U. S. 398, 443:

> "It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning—'We must never forget that it is a constitution we are expounding' (*McCulloch* v. *Maryland*, 4, Wheat. 316, 407)—'a constitution intended to endure for ages to come, and consequently to be adopted to the various crises of human affairs.' Id., p. 415. When we are dealing with the words of the Constitution, said this Court in *Missouri* v. *Holland*, 252 U. S. 416, 433, 'we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. • • • The case before us must be considered

in the light of our whole experience and not merely in that of what was said a hundred years ago.' "

It is not the function of this Court to determine the necessity or the wisdom of this law. We think it is a good law and that its good results are already manifest. It is a constitutional law. Its constitutionality is not destroyed, nor in any way affected by the fact that the application of some of the principles in the law is novel. The principles underlying the law are old and accepted principles of bankruptcy and equity law. A new application is made of these principles to the emergency now existing. Congress has the power to adapt its legislation to the needs of the nation and a new application of Congressional power does not render it unconstitutional.

Respectfully submitted

P. O. Sathre,
Attorney General of North Dakota,
Bismarck, North Dakota;
William Lemke,
Special Assistant Attorney General
of North Dakota,
Washington, D. C.
Harry H. Peterson,
Attorney General of Minnesota,
St. Paul, Minnesota;
David A. Sachs, Jr.,
Frank Rives,
Attorneys for Respondent.